DOCUMENT RESUME

ED 364 989 EA 025 535

AUTHOR	Gentzel, Thomas J.; And Others
TITLE	Pennsylvania's Sunshine Law: A Guide for Public School Boards. [Revised.]
INSTITUTION	Pennsylvania School Boards Association, New Cumberland.
REPORT NO	PSBA-10-93-5M
PUB DATE	93
NOTE	82p.
AVAILABLE FROM	Pennsylvania School Boards Association, 774 Limekiln Road, New Cumberland, PA 17070-2398.
PUB TYPE	Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC04 Plus Postage.
DESCRIPTORS	*Compliance (Legal); Court Litigation; *Disclosure; Elementary Secondary Education; *Freedom of Information; Freedom of Speech; Information Dissemination; Legal Responsibility; News Media; Privacy; *Public Schools; *State Legislation
IDENTIFIERS	*Act 84 (Pennsylvania 1986); *Pennsylvania

ABSTRACT

This publication provides information and guidelines on the way Pennsylvania school boards should meet and conduct business under Act 84 of 1986 (the Sunshine Act) and Act 20 of 1993. The first section provides a brief history of the passage of the Sunshine Act, which mandates an open-meetings statute for public agencies. The second section offers a "nuts and bolts" review. In the third section, operating suggestions are made regarding permissible nonpublic conferences, parliamentary procedures, and public involvement. Section 4 delineates provisions of the act regarding publishing, posting, and notifying the public and media of meetings. The fifth section reviews court decisions that interpreted the statute and highlights issues to show how the act affects public agency meetings. Recent cases decided pursuant to the 1957 Right-to-Know Act are summarized in the sixth section. The final section offers a series of questions and answers on definitions, conferences, executive sessions, voting, minutes, advertising, and rights of the public and the media. Appendices contain Act 84 of 1986 (Sunshine Act), Act 212 of 1957 (Right-to-Know Act), rules regarding the public's right to inspect and copy certain records, legal notice requirements, and guidelines for news media-government relations. (LMI)

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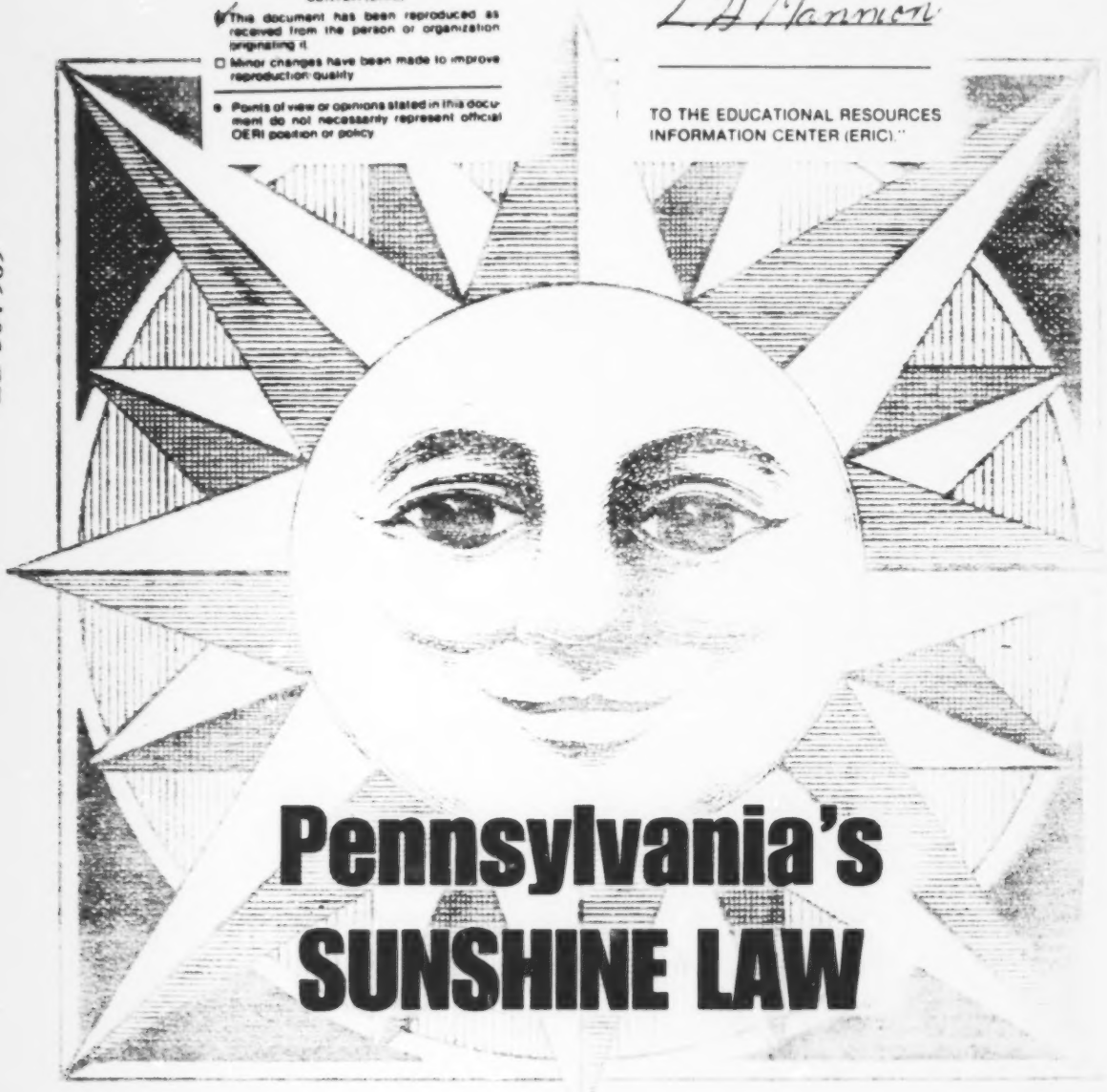

Pennsylvania's SUNSHINE LAW

A guide for public school boards

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PENNSYLVANIA SCHOOL BOARDS ASSOCIATION

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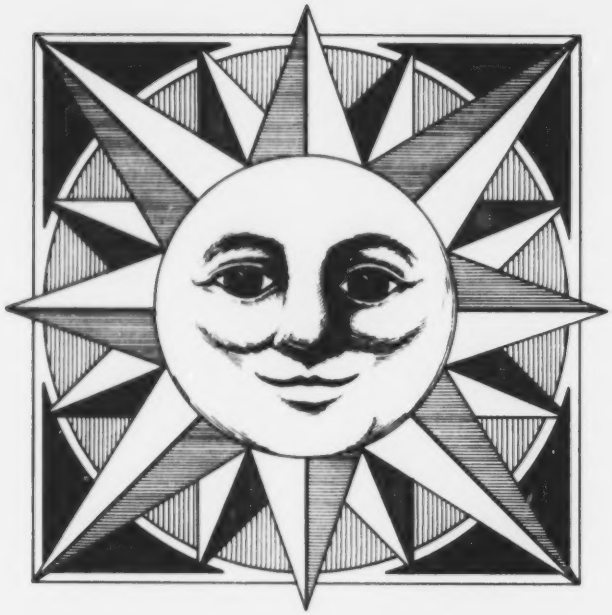
Information in this book is not intended to be legal advice. School officials should consult their solicitors for interpretations of the various provisions of the act and, where appropriate, request a formal written legal opinion.



Pennsylvania's SUNSHINE LAW

A guide for public school boards

Pennsylvania School Boards Association
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Preface

This PSBA resource book was developed to provide first-hand information and guidance on the way school boards should meet and conduct business under Act 84 of 1986 and Act 20 of 1993.

Completely revised from the 1986 edition, this publication represents another service to PSBA's membership which flows out of a strong organizational commitment to keep Pennsylvania school directors the best informed governance officials in the nation.

In the legislative deliberations that produced the Sunshine Act, PSBA and other statewide local government organizations sought to achieve an acceptable proposal. We are pleased that our efforts helped ensure fair and reasonable changes, striking a balance between the right of the public to know the public's business and the right of elected representatives to conduct the business of public institutions.

PSBA staff writers for this publication were: Thomas J. Gentzel, assistant executive director for governmental relations; Donald B. Owen Esq., assistant executive director for board development programs, who coordinated the project; and Stephen S. Russell Esq., chief counsel. Fritzi Schreffler, PSBA publications supervisor, served as editor.

We trust that you will find this publication useful in your efforts of promote public confidence in local school governance.

Joseph V. Oravitz
Executive Director

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A Brief History of the Sunshine Act

Act 84 of 1986, Pennsylvania's Sunshine Act, was nine years in the making -- the culmination of intensive efforts over five successive legislative sessions to enact a more sweeping open meetings statute for public agencies. The act, however, actually is far more balanced than any of the other open meeting proposals considered during that protracted debate. Eventually a compromise arose that was passed unanimously by both the Senate and House of Representatives after the Pennsylvania School Boards Association and other local government groups secured numerous amendments and, in turn, removed their opposition to some of the unbalanced proposals.

Court Ruling Prompts Action

Perhaps the greatest irony in these developments was what created all the furor in the first place, back in 1977: a Commonwealth Court decision involving a school board which held that only final votes on agency business need to be conducted at public meetings. That landmark case, Judge v. Pocius (School Law Information Exchange, Vol. 14, No. 23, 1977), issued just three years after the General Assembly had passed the former Sunshine Act, became a rallying point for advocates of open government. Indeed, the court's ruling so narrowly viewed the requirement for governmental agencies to conduct public meetings that advocates for change needed little additional inspiration.

Members of many governing bodies were assailed for violating the law because they conducted closed workshop meetings and executive sessions -- even though the 1977 court decision upheld the legality of such gatherings.

The Commonwealth Court decision notwithstanding, many local government officials voluntarily had opened their meetings to the public. Clearly they did so because they wanted to, since no court had directed them to take the action.

Those efforts counted for little as attempts to enact a new Sunshine Act began in earnest. Advocates generally took the position that the most appropriate response to a narrow open meetings law was a new one that was very broad in scope. From the beginning, proposed legislation on the subject effectively required that every discussion by a quorum of an agency be conducted at advertised, open meetings. The public was granted the right to be present on all such occasions if the deliberations "reasonably could be expected to result" in final action at some point in the future -- even years later.

Senate First to Approve New Proposal

After several years of debate, but little substantive action on the issue in the House of Representatives, activity shifted to the Senate in 1982. As a two-year legislative session was winding to a close, a proposed new Open Meetings Law was introduced by Sen. Robert C. Jubelirer (R-Blair), the Senate majority leader. His bill, which was the subject of a Senate committee hearing that year, was reintroduced in the next session and passed the full Senate in 1984. Proposed amendments offered on behalf of PSBA and other local government associations were defeated. That Senate floor vote came midway through the 1983-84 session, but no vote on the measure ever was taken by the House of Representatives.

In the 1985-86 legislative session, events unfolded differently. Shortly after the session began, Sen. Jubelirer, now president pro tempore, succeeded in having the bill moved quickly from committee to the Senate floor for a vote.

Aiding his efforts this time was a widely reported research study prepared by the University of Minnesota, "The Costs and Benefits of Openness: Sunshine Laws and Higher Education," which concluded that Pennsylvania's open meetings statute was the worst in the nation. In reality, the report reviewed only sunshine laws as they applied to governing bodies of colleges and universities; Pennsylvania's law for local agencies actually was far better than the study reported. PSBA and other local government organizations distributed to legislators and the news media a point-by-point rebuttal and correction to the study which concluded that Pennsylvania's law, properly evaluated, was exceeded by statutes of only eight other states in its openness, using the criteria established by the study itself.

Unfortunately, the damage already had been done. Despite the efforts of local government groups to set the record straight, the news media continually cited Pennsylvania's alleged last-place standing as a primary reason for needing a new Sunshine Act.

As this scenario took place, the prospects for the topic to become a major political issue rapidly appeared to be increasing. The Republican-controlled Senate clearly seemed determined to pass Sen. Jubelirer's bill quickly, forcing the Democratic House either to take similar action or, for the second session in a row, to explain why it did not. Such a partisan debate in the midst of the 1986 election campaign did not bode well for reasoned discussion of the issue.

Some observers were reminded of the hectic process leading to enactment of the 1978 Ethics Law, which came in a flurry of legislative activity just before the gubernatorial election that year. The highly charged political atmosphere in which that law was prepared left little room for interested organizations or individuals to present their views and help shape the legislation. The Ethics Law was drafted so quickly that few were aware of its provisions until final votes were ready to be taken.

Proposal Restricts Local Officials

With the proposed Sunshine Bill, matters likely would have been even worse because it contained so many objectionable features. The original version of the legislation offered little to allay the concerns of local officials. (It did contain some commendable features, including: expanded reasons for conducting executive sessions and removal of time limits for those meetings; clear authority for boards to establish necessary rules for the conduct of their meetings and the use of recording devices; and authority for courts to order plaintiffs to reimburse school districts and other agencies for legal challenges commenced in bad faith.)

As it went to the Senate floor for action, however, the proposed bill was an anathema to local officials due to a series of sweeping provisions, including:

- A requirement for public access to any meeting that is "a prearranged gathering . . . attended or participated in by a quorum of the members of an agency at which (1) official action is anticipated or taken or (2) deliberations of agency business are

held, if the deliberations reasonably may be expected to result in official action."

- o A definition of "official action" that extended well beyond casting votes or even making decisions. The term included, for instance, a reference to "the official receipt of reports and documents."

- o Broad minute-keeping requirements that extended to all meetings -- including those lawfully closed under the bill -- and which effectively permitted any one member of a board to determine what would be entered into the minutes.

- o Authorization for citizens to challenge any action taken by a board at any time. In essence, no board action could have been considered final, since legal challenges always were able to be filed.

In PSBA's view, the proposed legislation was a nightmare. It virtually would have eliminated any opportunity for board members to hold informal discussions because nearly everything they might talk about could "reasonably be expected to result in official action" at some time in the future.

The bill before the Senate, in attempting to open all doors of government, posed an ominous threat to the ability of local officials to perform their tasks, to even talk casually among themselves. That was where the bill stood at the beginning of the process; based on the Ethics Law experience, prospects for improving the bill in the final stages of activity, in the middle of an election campaign, were not encouraging, to say the least.

PSBA Leads Efforts to Amend Bill

PSBA and other local government groups turned to Sen. J. Doyle Corman (R-Centre), an ex-county commissioner and former chairman of the Senate Local Government Committee, to offer amendments to the legislation on the Senate floor. On a dramatic 26-23 vote in June 1985, the Senate approved his amendments which addressed virtually all of the major objections to the bill raised by local officials.

The Senate's action on those amendments, which effectively was by a one-vote margin, served to halt a bill highly objectionable to local officials and replace it with one far more balanced than any of its predecessors. PSBA and the municipal associations withdrew their opposition to

PSBA's Amendments Improve Sunshine Proposal

In the legislative deliberations that produced the new Sunshine Act, PSBA along with other statewide local government organizations sought to achieve an acceptable proposal. That required changes to a number of provisions of the legislation that local officials had found most objectionable. The amendments PSBA helped to draft and which were approved by the Senate:

- Excluded administrative action -- defined as the execution of previously adopted policies -- from the open meetings requirement.
- Added a provision actively sought by PSBA permitting informational meetings (known as conferences) held for the purpose of providing information to agency members, which could be closed to the public.
- Required that only those deliberations "held for the purpose of making a decision" be conducted at open meetings.
- Narrowly defined meeting to be only those prearranged gatherings specifically held for the purpose of deliberating agency business or taking official action.
- Restricted minute-keeping requirements to only open meetings and removed the provision allowing individual board members to dictate the content of minutes.
- Authorized boards to conduct executive sessions concerning matters protected by lawful privilege or related to investigations, as well as for quasi-judicial deliberations.
- Provided a more restrictive definition of official action.
- Limited to one year the period for citizen challenges to be filed.

final passage of the measure provided no further changes were made that adversely would affect local officials. The Senate tabled the bill and, in the ensuing months, renewed efforts were undertaken to achieve an acceptable compromise on the issue. Sen. Jubelirer and his staff took an active leadership role in these efforts, meeting with PSBA and other local government interests as well as with newspaper publishers, Common Cause and other leading advocates of a new open meetings law.

PSBA participated in those discussions in an effort to ensure that a new law would be balanced, protecting both the public's right-to-know as well as public officials' right-to-act. By March of 1986 agreement was reached on several further revisions to the bill, primarily technical changes that left almost completely intact the Corman amendments of the year before.

Those additional changes were approved by the Senate, which in turn passed the bill unanimously. With all affected groups supporting the compromise, House action supported that taken by the Senate: no amendments were inserted in House committee or during the floor debate. The legislation, unchanged from the compromise version drafted before the Senate passed the measure, was signed into law by Gov. Dick Thornburgh and became Act 84 of 1986.

PSBA was successful not only in securing numerous, essential changes to the sweeping original version of the bill, but in helping to preserve those amendments -- and prevent literally dozens of others which were ready to be offered that would have expanded the bill and made it unacceptable to local officials. In the end, the issue never became embroiled in the 1986 election campaign, there was little acrimony or partisanship and the interests of local officials were largely protected.

Act 84 of 1986 is not perfect. No law ever is. Yet, compared with what easily could have been enacted, the Sunshine Act is a reasonable compromise. Since 1986, the act has been amended once; Act 20 of 1993 requires school districts to provide a reasonable time for residents and/or taxpayers to address the board.

"Nuts and Bolts" Review of Act 84

To begin to understand Act 84 of 1986, the Sunshine Act, it is important to first become familiar with its individual parts. Such a review should help provide an understanding of the basic elements of the act, as well as enable school board members to become more comfortable with their requirements and operation. But the act has several parts that must be integrated with the School Code, the Right-to-Know Act, case law and aspects of other laws and legal principles. Be careful in interpreting and drawing conclusions without consulting with your solicitor.

Two concepts should be kept in mind in reviewing the Sunshine Act. First, there is a presumption that all meetings are public unless specifically excluded. Second, PSBA advice and guidance is directed toward helping school boards comply with the act and not avoiding the requirements for open, public meetings.

Section 2. Legislative Findings and Declarations

Several legal cases have cited this section as being critical in deciding the rights of the public versus the rights of publicly elected officials.

The General Assembly has declared it to be the public policy of the commonwealth that citizens have the right to have notice of and attend all meetings and witness agency business being discussed and acted upon. Secrecy in public affairs is seen as undermining the faith of the public in government.

Section 3. Definitions

It is critical in attempting to understand the act to focus upon its key definitions.

o AGENCY -- This includes the local school board, the intermediate unit board, the area vocational-technical

school operating committee and all committees thereof authorized by the body to take official action or render advice on matters of agency business. This includes all committees of the board, but not outside advisory committees created by the board.

o AGENCY BUSINESS means the framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise, or the adjudication of rights, duties and responsibilities, but not including administrative action. (Administrative action is the execution of policies relating to people or things previously authorized or required by official action.)

Administrative directives normally are used to implement board policy. However, many districts refer to these as regulations. The more appropriate terminology might be administrative directives or guidelines or some other term so as to not be in conflict with the definition of agency business. The term regulations usually is associated with state agencies, not local school districts.

o CONFERENCE -- Boards are allowed to conduct closed, informational meetings, or to attend informational meetings such as seminars and conventions without being in violation of the Sunshine Act.

This should be viewed as a process of providing information and asking clarifying questions, provided absolutely no deliberations take place. For example, if board members are briefed in December on the district's budgeting process, this might be an appropriate use of a conference. However, such a meeting held in May when budget decisions need to be made likely would be improper; at the very least it would be viewed with great suspicion and distrust.

o DELIBERATION is more than just talk. It means the discussion of agency business held for the purpose of making a decision. This suggests a predisposition to make a decision on some item.

o EXECUTIVE SESSION is a meeting from which the public may be excluded, held for specific purposes. See p. 16 regarding the LEAR acronym.

o MEETING -- Any prearranged gathering of an agency which is attended or participated in by a quorum of the members held for the purpose of deliberating agency business or taking official action. This definition

suggests that not all gatherings are meant to be open, public meetings. A gathering is not public unless it has been prearranged, has a quorum of the board or committee and is being held for the purpose of deliberating or taking action on agency business.

o OFFICIAL ACTION is a rather broad definition. It includes:

1. Recommendations made pursuant to statute, ordinance or executive order.
2. Establishment of policy.
3. Decisions on agency business.
4. The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

o PUBLIC NOTICE -- Simply stated, regular meeting notices are to be published in the newspaper, posted at the meeting site and sent to requesting news media at least three days in advance.

Rescheduled and special meeting notices are to be published, posted and sent at least 24 hours in advance. There are no specified deadlines for recessed and reconvened meetings which require posting. (See Chapter 4.) There is no requirement to advertise a meeting that is cancelled; common sense would suggest posting a cancelled notice at the meeting site and possibly calling people expected to attend.

Section 4. Open Meetings

This is the crux of the act. It simply requires official action and deliberations by a quorum of the agency to take place at a meeting open to the public unless closed under Section 7 (executive sessions, conferences or board of auditors meetings) or Section 8 (executive sessions).

By definition, official action includes discussion held for the purpose of making a decision, recommendations made by an agency, votes, establishment of policy and the framing, preparation, making or enactment of policies or regulations, creation of liability and adjudication of rights, duties and responsibilities.

This section reaffirms the presumption articulated in the legislative findings that all meetings are open to the public unless specifically provided otherwise.

Section 5. Recording of Votes

This section simply provides that votes in all meetings (prearranged and attended by a quorum held for the purpose of deliberating agency business or taking official action) on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of roll call votes, recorded.

Section 6. Minutes, Public Records and Recording of Meetings

These requirements not only apply to open meetings of the board but also to committee meetings as well.

The minutes must include:

1. Date, time and place of the meeting.
2. Names of members present.
3. Substance of all official actions and a record by individual member of the roll call votes taken.
4. Names of all citizens who appeared officially and the subject of their commentary.

School boards are required by Act 20 of 1993 to provide a reasonable opportunity for residents and/or taxpayers "to comment on matters of concern, official action or deliberation which are or may be before the board...". The names and the subject of their comments must be recorded in the minutes.

Boards should have policy officially recognizing those who appear in a public meeting requesting an opportunity to speak and allowing them a reasonable time to comment whether it be before, during or after the board transacts its business. Most boards, as a matter of courtesy, schedule this public comment period before they begin to vote.

Section 7. Exceptions to Open Meetings

This section sets forth three exceptions to the open meeting requirement:

1. Executive sessions.
2. Conferences, as long as there is no deliberation of agency business.
3. Certain working sessions of boards of auditors (not applicable to school districts).

For our purposes, there are only two exceptions to the open meeting requirement: executive sessions and conferences. Keep in mind that a conference can be conducted by a school board itself or convened by organizations such as PSBA, the PTA, League of Women Voters, etc.

Section 8. Executive Sessions

Executive sessions may be:

- Held before an open meeting.
- Conducted during an open meeting.
- Announced for a future time before an open meeting adjourns.
- Held at the conclusion of an open meeting.
- Called in between regularly scheduled meetings, in which case at the next regular (or special) meeting, the fact that such an unscheduled executive session was held and the reason must be announced.

There is no time limit for an executive session, regardless of when it is held.

Recent case law holds that there must be reasonable specificity in announcing what the board discussed or intended to discuss in executive session. (See Chapter 5.)

Executive sessions can be conducted to:

1. Discuss practically any matter involving employees. The Sunshine Act does give an affected employee the right to request in writing that the matter be discussed at an open meeting; however, the act does not require that such a request be granted.

2. Consider matters related to negotiation or arbitration of a collective bargaining agreement, or in the absence of one, matters related to labor relations and arbitration, including negotiation sessions.

3. Consider purchasing and leasing real estate.

4. Consult with an attorney or other professional adviser regarding information or strategy in connection with litigation or issues on which identifiable complaints are expected to be filed, such as litigation filed or to be filed by or against the school district, IU or vo-tech.

"Professional adviser" could include financial consultants, architects, insurance experts and engineers providing technical advice on those areas of expertise.

5. Review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters relating to investigations of possible or certain violations of the law and quasi-judicial deliberations. For example, tenured teachers being discharged have a right to a private hearing, if they prefer. This section would seem to protect that right.

The reason for holding an executive session must be announced with enough specificity to "be genuine and meaningful, and one the citizen can understand", to quote a 1993 Commonwealth Court decision, The Reading Eagle Co. v. Council of the City of Reading, (School Law Information Exchange, Vol. 30, No. 57 (1993)).

If an executive session is not announced for a future specific time, board members must be notified 24 hours in advance of the time of the meeting, specifying the date, time, location and purpose. While not expressed in the statute, such notice probably should be given in writing so as to protect all parties.

For example, if an open meeting is held on July 12 and an executive session is called for July 25, that executive session should be announced at the July 12 meeting. If this cannot be done, it should be announced at the next open meeting held after the July 25 executive session, and members would need to be given the 24-hour notice of the July 25 executive session.

Keep in mind that discussions can be held in executive sessions; however, official action (voting) must be taken at an open meeting. Further, executive sessions cannot be a subterfuge to defeat the purpose of having open meetings. In other words, executive sessions should only be held for the four reasons already recited.

Section 9. Public Notice

(See Chapter 4.)

Section 10. Rules and Regulations for Conduct of Meetings

Public agencies covered by the Sunshine Act are authorized to adopt rules and regulations for the conduct of meetings and the maintenance of order. This is consistent with authority granted to boards in the School Code. (24 P.S. 4-407)

Section 10.1. Public Participation

Gives residents and/or taxpayers a reasonable opportunity to comment on matters of concern, official action or deliberation before the board.

Section 11. Use of Equipment During Meetings

People attending meetings have the right to use recording devices to record all of the proceedings. Agencies can adopt and enforce reasonable policies for the use of recording devices, pursuant to Section 10.

For example, meetings do not have to stop to permit a citizen to change a tape. A board can require that recording devices be placed in a particular location and prohibit their use in a manner which would disrupt a meeting.

Common sense should prevail. Any board policy attempting to control the use of recording devices at meetings should be rationally drawn and reasonably related to keeping order at open meetings.

Section 12. General Assembly Meetings Covered

This section merely covers activities of the General Assembly that are subject to Act 84.

Section 13. Business Transacted at Unauthorized Meeting Void

Legal challenges to alleged violations of the act must be commenced within 30 days of the date of an open meeting or, if no open meeting was held, 30 days from the discovery of the action, with all challenges to be filed within one year of the event in question. This section sets forth, in essence, a one year statute of limitations for Sunshine Act violations.

The courts are given a good deal of discretion in dealing with alleged violations. This especially is important for those situations where there might be minor, unintentional violations. There have been a number of decisions where violations did occur when an agency conducted improper executive sessions, thereby tainting an issue. However, in virtually all cases the "taint" also was cured by subsequent discussion of the issue in public meetings. (See Chapter 5.)

The section also provides that the court may impose attorney fees for legal challenges commenced in bad faith. This was intended to reduce the threat of frivolous challenges to board actions.

Section 14. Penalty

Any agency member who participates in a meeting with the intent and purpose of violating the act commits a summary offense and can be sentenced to pay a fine not exceeding $100 plus the costs of prosecution. To be found guilty, one's intent and purpose to violate the act must be proven.

Section 15. Jurisdiction and Venue

The court of common pleas in each county has jurisdiction of actions involving school districts to render declaratory judgments or to enforce the Sunshine Act by injunction or other remedies. Any person can institute the action in the appropriate county court of common pleas.

Section 16. Confidentiality

Matters deliberated or upon which official action is taken that are protected by statute as confidential or a lawful privilege do not fall within the scope of the act.

Section 17. Repeal

The two prior sunshine laws, the acts of 1957 and 1974, were repealed by Act 84 of 1986.

Section 18. Effective Date

January 5, 1987.

Operating Effectively in the Sunshine

The CLEAR Acronym

As indicated, Act 84 of 1986 represents a balance between the need for private discussions on sensitive issues and the right of the public to observe and listen to its elected officials as they discuss and make decisions. Residents and/or taxpayers also have the right to comment at public meetings.

Probably without realizing it, the Legislature gave birth to a new acronym -- CLEAR -- which seems consistent with imagesof openness and sunshine! The C stands for conferences; the L for labor negotiations; the E for employee relations; the A for attorney/adviser; and the R for real estate. These are the five reasons boards can meet privately.

Information Sessions Permitted

The provision of Act 84 titled "conferences" allows board members to go out to a conference or a seminar sponsored by PSBA, an intermediate unit, the Department of Education or other organizations "for the sole purpose" of receiving information without the public and the news media having a right to be present. Inviting someone in for a conference may not be as easy. In The Times Leader v. School Board of Dallas School District, (School Law Information Exchange, Vol. 25, No. 43, 1988), the Luzerne County Court of Common Pleas held that the school district could not hold a conference to discuss and review a report prepared by a consultant intending to make recommendations on alleviating overcrowding in the district's schools. The newspaper/plaintiff was successful in getting an injunction prohibiting the meeting three days before it was scheduled.

Board members in the latter situation are cautioned not to use such an information session for purposes of discussion or deliberation. It is permissible to ask questions to clarify information being delivered. But board

members should not begin to discuss this information between and among themselves while in conference.

The LEAR Acronym

Take the C away from CLEAR (because you can't deliberate at a conference) and you are left with the acronym LEAR. Three of these areas -- Labor, Employee and Attorney/adviser issues -- as anyone familiar with the typical school board agenda knows, often constitute a significant percentage of a board's business. The provision of the act least likely to be a recurring item is Real estate.

One technique that some boards use involves having two meetings a month as a committee of the whole. One is for the limited purpose of considering all LEAR issues. This meeting can be held privately in executive session.

The second meeting of the committee of the whole occurs several days later. This public meeting is where all other items submitted for consideration appear on the agenda for discussion or resolution. At this meeting, if formal action on those LEAR items discussed privately is necessary, a vote must be conducted in public.

Shyness and Filibustering

Historically there have been two major concerns board members have had with the Sunshine Law:

1. The glare of the media tends to stifle conversation and board members are reluctant to share what's on their minds for fear of being accused in the newspaper the next day (or the 11 o'clock news) of having asked a dumb question or having made unsupported motions. In short, the timid would become shy.

2. The presence of the public and the media can encourage endless debate and provide one or more board members a forum to monopolize discussion and engage in posturing and other forms of self-serving political glorification. In short, the bold would become brazen and filibustering would turn into a local art form.

The solution to the first concern evaporates to some extent once board members get several meetings under their belts. Establishing open, honest, candid and consistent avenues of communication with the media outside of the

public meeting setting will go a long way to ensure accurate and fair reporting.

The solution to the second issue -- potentially endless discussions -- can be minimized by any board which understands basic parliamentary procedure, as illustrated below.

Possible Parliamentary Procedures

Consider these three scenarios.

Scenario One -- Any board membershould be guaranteed by policy the right to get any issue on the agenda by submitting that issue in a timely fashion for discussion at the next meeting. Once an item is on the agenda, it requires a second before discussion can begin. Without a second, the item will take virtually no group time. The rights of the minority (of one) are protected, but the will of the majority (of eight) rules the day. The issue becomes public, but it does not waste time or provide an opportunity for filibustering.

A board member being able to get an item on the agenda is an important aspect of democracy. Unfortunately boards (or those who construct the agenda) sometimes engage in negative agenda building. This occurs by sensing that there are not enough votes for an item to pass, so it never gets on the formal agenda to be discussed, even if it is predestined to be defeated.

Scenario Two -- Once a motion is seconded, discussion can occur. That discussion, should it tend to get longwinded, always is subject to these three motions: 1) table the item until the next meeting; 2) postpone it indefinitely; or 3) refer it to a committee. Such procedural motions need a second but are not debatable; they simply are voted up or down. If a motion to table, postpone or refer is supported by a majority of those present and voting, the time of the board is not unduly consumed. Any attempt at filibustering can be controlled by the will of the majority.

Scenario Three -- Once an agenda item (having been seconded) is under discussion, any board member can make a motion to limit debate or to call the question. This procedural motion also requires a second and is not debatable, but it does require six out of nine members to vote to end the discussion. If six members vote to stop discussion, the agenda item itself is then voted up or

down. Therefore, time will not be wasted on items that a two-thirds majority of the board have thoroughly discussed.

If a motion to call the question does not get six votes then discussion will continue. The motion can be renewed at a reasonable time thereafter. Regardless of whether the motion is likely to be approved or defeated, after a certain amount of discussion it becomes rather apparent (especially among only nine members) what the pros and cons of the issues are, and how those who have spoken are likely to vote.

Another valuable piece of policy that might be worthwhile to have on the books to prevent filibustering is a provision that would limit any board member to no more than one or two minutes per topic and a rule that does not allow a board member to make a second comment/speech until all others have had an opportunity for their two minutes. It's a rule that should not have to be invoked frequently, but would be handy to have for that rare occasion when any one member would seek to monopolize discussion by preventing the chair from recognizing another member who wishes to speak to the topic, or to make a procedural motion.

Committee Operations Affected

The Sunshine Act does not destroy an individual board member's freedom of speech. It is well understood that a board member has no authority except when acting as part of the entire board at a duly constituted open meeting. Yet nothing in the act precludes one-on-one discussions between board members (or between the superintendent and board members) between sessions, especially among board members who operate as a committee of the whole. But such a conversation between two board members of a three-person committee would be a meeting if it is a "pre-arranged gathering of an agency which is attended or participated in by a quorum of the members..." (emphasis added). The definition of the word agency includes "all committees thereof."

School boards, therefore, may wish to reconsider the use of numerous committees whose meetings also must be advertised under the act.

Public Involvement in Board Meetings

Prior to August 15, 1993, the Sunshine Act did not

give people in attendance the right to address the board, although virtually all school districts had a policy allowing public comment. Act 20 of 1993 formally bestowed upon residents and/or taxpayers of a district the right "to comment on matters of concern, official action or deliberation which are or may be before the board..." Boards, by policy, may still regulate how much time is to be allotted to receive such public comment. For example, policy also can limit any one person to one or two minutes.

The law also allows the board to "defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting." Nothing in the law requires the board to debate or add to the agenda for a vote issues of concern to the public.

Three More Aspects of Act 84

Three other aspects of the act are worth mentioning as part of how boards conduct effective meetings.

- Adjournment and recesses.
- Where meetings are held.
- Right of the public to record meetings.

Act 84 says little about adjournment and recesses. Section 10 allows the board (as does Section 407 of the School Code) to adopt "rules and regulations necessary for the conduct of its meetings" as long as they are not made "to violate the intent of this act."

Common sense and parliamentary procedure ought to coalesce into written policy allowing the board (upon a majority vote) to take a recess or to adjourn early if: the hour is late; a meeting fails to generate or maintain a quorum; any disturbance would render the ordinary conduct of the meeting unfeasible and order could not be restored.

Ability to recess or adjourn early is buttressed by that part of the definition of public notice which does not require readvertising a recessed or reconvened meeting.

Where Boards Should Meet

Act 84 requires posting of notice "at the principal office of the agency...or at the public building in which the meeting is to be held." (emphasis added)

Although most meetings of the school board are held in a school building or some public building within the school district which is readily open and available to the constituency of the district, there does not appear to be a strict requirement to do so. Some boards have been known to meet in firehalls, American Legion buildings and other such community buildings. Others meet at least once a year at the intermediate unit building or the vo-tech school which may not be within the school district boundaries.

Recording Devices at the Meeting

"Recording devices" are permitted under the Sunshine Act. Clearly, given the technology of the times, PSBA is of the opinion that tape recorders and video cameras are allowed.

In 1981, PSBA and several other local government associations, met with media associations to develop a set of guidelines suggesting respective responsibilities during the conduct or coverage of a public meeting.

Those guidelines can be found in Appendix E.

Publish, Post and Notify

Act 84 of 1986 has many detailed provisions regarding publishing, posting and notifying the public and the media of meetings.

Board secretaries, who by law, policy or custom often are responsible for these activities, need to pay particular attention to several sections of the act.

- Section 3 -- Definitions of emergency meetings, public notice, special meetings.
- Section 5 -- Recording of votes.
- Section 6 -- Keeping written minutes.
- Section 8(b) -- Notification procedures for executive sessions.
- Section 9
  - (a) Publishing a list of regular annual meetings.
  - (b) Advertising special meetings 24 hours in advance.
  - (c) Honoring the stamped self-addressed envelope request.

Notice of Regular Meetings

The district must give public notice of its first regular meeting of each calendar or fiscal year not less than three days before the meeting. At that time notice of the remainder of the regularly scheduled meetings also shall be published in a newspaper of general circulation, posted at the principal office of the agency or public building in which the meetings are to be held, and notice given to any newspaper, television or radio station or other interested party furnishing the district with a stamped self-addressed envelope.

For districts that have active committees, it would be wise to standardize the date, time and place each committee plans to meet throughout the year and publish that list once at least three days before the first meeting of the new year. Most districts do this on a calendar year basis, following reorganization of the board during the first week in December, as required by the School Code.

Notice of Special Meetings

Any special meetings of the board (defined as any meeting scheduled after the regular schedule has been established at the beginning of the year) requires notice "...at least 24 hours in advance of the time of the convening of the meetings specified in the notice" in Section 9(a). Section 9(b) simply reinforces the 24-hour rule by providing that the notice must be "...in time to allow it to be published or circulated within the political subdivision where the principal office of the agency is located or the meeting will occur before the date of the specified meeting" (emphasis added).

Executive Sessions

Under Section 8(b), if an executive session is not announced at an open meeting "members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session." Note that only the members need to be notified. Since executive sessions are closed to the public and news media, there is no need to publish or post notice of these meetings or to take, record and approve minutes.

Case Law – Sunshine Act

Since the advent of Act 84 of 1986,, there have been dozens of court decisions interpreting the statute. The following is a topical review of the most significant cases decided to date, selected to highlight issues school officials need to know to appreciate how the Sunshine Act affects meetings. The act is reprinted in Appendix A.

Advertising

1. In Re Petition of the Board of Directors of the Hazleton Area School District, 107 Pa. Cmwlth. 110, 527 A.2d 1091 (1987); School Law Information Exchange, Vol. 24, No. 78 (1987).

This case involved one of the first appellate interpretations of the current Sunshine Act. It focused on the notice provisions found in Section 9.

Hazleton Area School District's redistricting plan was challenged by a group of citizens. Commonwealth Court struck down the original redistricting plan adopted by the district and remanded the case for adoption of a new plan. The court was aware of the upcoming primary election and directed that the trial court use its equity powers to supervise adoption of another plan and extend the deadline for filing nominating petitions. After a hearing, the trial court accepted the district's new plan, but the district, in adopting the new plan, did not technically comply with the notice provision of the Sunshine Act.

The court held that because there was no allegation that a concerned individual did not learn of information which should have been advertised and was prejudiced thereby, the failure to comply with the notice provisions was excused.

It should be emphasized that this is a narrow holding and the courts will restrict its use probably as a precedent accordingly.

2. Devich v. Borough of Braddock, 144 Pa. Cmwlth. 578, 602 A.2d 399 (1992).

The borough council scheduled a hearing for December 29, 1989, at 7:30 p.m. to determine whether the two appellants' offices as council members should be declared vacant. On December 14, 1989, a letter was sent to each of the appellants advising them of the hearing. A special meeting for general purposes was also scheduled for December 29, 1989, and, as advertised, it was to begin at 7 p.m.

On December 29th the council convened and began the hearing at 7:16 p.m. The appellants did not appear but were represented by counsel who objected to the holding of the hearing and questioned whether or not it was proper under the Sunshine Act. Eventually, council did conduct the hearing and, after the close of testimony, a motion was made and seconded and approved to declare the two appellants' council seats vacant.

On appeal the court noted that Section 9(a) of the Sunshine Act was not violated. That section provides in part, "an agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice."

In this case the appellants contend that the two special meetings held on the evening of December 29th should have each been advertised separately. The court did not agree with this and adopted the trial court's interpretation of the act as follows:

> "The advertisement in the Pittsburgh Press on December 22, 1989 satisfied the public notice requirements of the Act. The Act does not require that the notice to be published in a newspaper of general circulation contain a statement of the purpose of the meeting or a description of the business to be conducted at the meeting. The public policy that the Act is intended to protect is the right of the citizens of the Commonwealth 'to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon ...' 65 P.S. Section 272(b). While there may be other legal requirements regarding the form and specificity of notice contained in other statutes or ordinances, the Sunshine Act's notice requirements are minimal and were complied with in this case. It is irrelevant that the hearing was scheduled for 7:30 p.m. and a 'special

meeting for general purposes' scheduled for 7:00 p.m. The public was legally and effectively put on notice that public business would be conducted by Council on notice of the hearing was not required by the Act."

The School Code also contains a provision pertaining to the calling of special meetings. It requires that, when an advertisement is placed for the calling of a special meeting, either the specific purpose of the meeting be listed or the meeting be advertised as one for general purposes. If it is advertised for a specific purpose, only the business that is advertised can be conducted.

Consultants

3. The Times Leader v. School Board of Dallas School District, (C.P. Luzerne County), 49 D&C 3rd 329 (1988); School Law Information Exchange, Vol. 25, No. 43 (1988).

The school district had a meeting scheduled with a consultant to review a report prepared by the consultant concerning recommendations on alleviating overcrowding in the district. The newspaper went to court to enjoin the meeting scheduled to be held in private as a conference.

The court noted, after hearing testimony of the superintendent, that the meeting truly was informational and that it was scheduled to afford board members the individual opportunity to ask questions concerning aspects of the report. But, the court held, "all we now hold and declare is that until the issue can be more fully presented and considered that it is in the best interest of all concerned that we grant the requested relief" and did not permit the consultant to meet with the board privately.

However, the court concluded that the meeting proposed did not constitute a "conference" as defined in Act 84. It concluded that, "we understand and appreciate the superintendent's position that informational meetings are certainly beneficial and that there may be occasions when such meetings should be conducted in closed session. However, this position should be presented to the legislature rather than the court." This decision was not appealed to Commonwealth Court.

4. Easton Area Joint Sewer Authority v. The Morning Call, Inc., 135 Pa. Cmwlth. 363, 581 A.2d 684 (1990); School Law Information Exchange, Vol. 27, No. 71 (1990).

This case involved the question of whether or not a discussion of matters pertaining to a consultant could be held in executive session. In this particular situation Commonwealth Court found that the Sewer Authority violated Section 8 of the Sunshine Act by holding an executive session to discuss matters pertaining to a consultant.

A consultant is not an "employee" or "public officer" as used in the act. Thus, the employee exception to public meetings did not apply. The court noted that the Sunshine Act does not define the term public employee or officer and, therefore, the court had to interpret the act in terms of what it meant with respect to what kinds of people can be present to discuss issues in executive sessions.

In coming to its conclusion, Commonwealth Court relied on the test set forth in Hammermill Paper Co. v. Rust Engineering Co., 430 Pa. 365, 243 A.2d 389 (1968), for determining the difference between an employee and an independent contractor:

> "(c)ontrol of manner of work is to be done; responsibility for result only; terms of agreement between parties; the nature of work or occupation; skill required for performance; whether one employed is engaged in a distinct occupation or business; which party supplied the tools; whether work is part of the regular business of the employer and also the right to terminate the employment at any time."

This is the test that will more than likely be used in trying to decide whether discussion of matters pertaining to certain categories of people are employees under the Sunshine Act, thus entitling the agency to discuss matters pertaining to them in executive sessions.

The court also examined the requirement in Section 8(a)(1) that "individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting." The record revealed that the consultant was not given the opportunity to do this, since the authority went into executive session merely announcing a "personnel matter" and not indicating what that matter was. The Sewer Authority later reconvened after the executive session and immediately voted on the termination resolution of the consultant. But since the consultant was not an employee, the Authority's failure to give him an opportunity to request a hearing was irrelevant.

It should be noted that while the law does give employees rights to request that matters pertaining to them to be discussed in a public meeting, there is no specific requirement that says that an agency must accede to that request. It only says that the person has an opportunity to make such a request. It is the opinion of some that this merely relates to the issue of employees waiving any privacy rights they may have, as opposed to a requirement that an agency is required to discuss matters in public simply because employees request they be discussed.

Dismissing People

5. The Morning Call Inc. v. Commonwealth of Pennsylvania, Board of Pardons, ___ Pa. Cmwlth. ___, 580 A.2d 1183 (1990); School Law Information Exchange, Vol. 27, No. 72 (1990).

This case does not directly address the Sunshine Act or the Right-To-Know Law. However, the courts might use this decision to make comparisons since Section 508 of the School Code requires five affirmative votes to dismiss, and also requires that minutes indicate how each board member voted.

Commonwealth Court held that Article 4, Section 9 of the Pennsylvania Constitution, which says that the Board of Pardons must take its actions "after full hearing, upon due public notice and in open session ..." and the language "The Board shall keep records of its actions, which shall at all times be open for public inspection ..." means that board hearings, including voting on matters before the board, take place at a session open to the public." It also held that board actions be recorded and the records be open to the public for inspection at all times. The vote, whether by voice or roll call, must be recorded and available to the public. The board had conducted a public hearing, voted in private and disclosed its actions to the public, but refused to disclose the individual votes.

6. Keenheel v. Commonwealth of Pa., Pa. Securities Commission, 134 Pa. Cmwlth. 494, 579 A.2d 1358 (1990); School Law Information Exchange, Vol. 27, No. 92 (1990).

Commonwealth Court refused to invalidate a settlement agreement approved by the Securities Commission in executive session concerning the termination of an employee. It found that Section 3 of the act granted courts the discretion to invalidate actions taken at an illegally closed meeting; it does not require invalidation.

In this case the respondent did not claim any harm because of the violation, therefore, the court did not void it.

7. Mirror Printing Co., Inc. v. Altoona Area School Board, 148 Pa. Cmwlth. 168, 609 A.2d 917 (1992); School Law Information Exchange, Vol. 29, No. 51 (1992).

Commonwealth Court held that the school board properly discussed the settlement of an employee disciplinary matter in an executive session, voted on the action at a public meeting but did not disclose the basis of the suspension, without violating the Sunshine Act or the Right-To-Know Act (this case and others pertaining to the Right-To-Know Act are discussed in Chapter 6).

8. This case must be compared tc The Morning Call, Inc. v. Lower Saucon Township, ___ Pa. Cmwlth. ___, 627 A.2d 297 (1993); School Law Information Exchange, Vol. 30, No. 62 (1993), where a different panel of judges of Commonwealth Court held that a settlement agreement between a township and a person who alleged that his civil rights were violated by the township police, was a public record subject to public inspection and copying pursuant to the Right-To-Know Act, 65 P.S. Secs. 66.1 - 66.4.

Filling Vacancies

9. The Morning Call, Inc. v. The Board of School Directors of the Southern Lehigh School District, (C.P. Lehigh County 1993); School Law Information Exchange, Vol. 30, No. 47 (1993).

The Lehigh County Court of Common Pleas held that the school district did not violate Section 3 of the act when it met in executive session to reduce the number of candidates for the superintendency from five to three. The court cited these facts as an example of the legislative intent that some things need not be done in public, noting that revealing the names of the candidates in public would pose a serious obstacle for governmental bodies to attract candidates.

10. Cumberland Publishers, Inc. v. Carlisle Area School District, (C.P. Cumberland County 1993); School Law Information Exchange, Vol. 30, No. 65 (1993).

In this case the Cumberland County Court of Common Pleas held that the school board did not violate the Sunshine Act when it met in private to interview applicants

for a vacant position on the school board and also met in private to consider the qualifications of the applicants.

The Cumberland County Court of Common Pleas, in reviewing precedent, concluded that the filling of a vacancy on the school board is equivalent to making an "appointment" and further held that, because the board's action was an appointment, the board was free to discuss any matter in an executive session in relation to that appointment pursuant to Section 8(a)(1).

Curing The Taint

11. Bianco v. Robinson Township, ___Pa. Cmwlth. ___, 556 A.2d 993 (1989); School Law Information Exchange, Vol. 26, No. 56 (1989).

The majority of the township commissioners made a decision to promote two officers in an executive session, in violation of the Sunshine Act, according to the opinion of the lower court.

However, the promotion was later debated at a regular sunshine meeting of the entire board of commissioners where a resolution was adopted reaffirming the previous "private" promotion of the two officers.

Commonwealth Court upheld the right of the commissioners to ratify the promotions at their second (sunshine) meeting which satisfied the requirements of the Sunshine Act in that the public's right to know and be present at the second meeting was in accordance with the intent of the legislature, particularly where there was no allegation of fraud. Since matters discussed in executive session must be voted upon in an open meeting before they become official, the court concluded that the holding of the second sunshine meeting "cured" the defect, if any, in the first executive session meeting.

This concept of curing the defect or curing the taint appears in many decisions.

12. Ackerman v. Upper Mt. Bethel Township, 130 Pa. Cmwlth. 254, 567 A.2d 1116 (1989); School Law Information Exchange, Vol. 27, No. 20 (1990).

Commonwealth Court held that a meeting not open to the public between the township board of supervisors and an employee of a developer was not a legitimate conference. The court concluded that this meeting held to discuss an

amendment to a zoning ordinance which would be voted on at a later public meeting was agency business.

The court found that no official action took place in this meeting and no evidence was presented that the council members made any decision as to the amendments in question. However, the court did find that the parties deliberated, as that term is defined in the act, since they did discuss agency business which was the proposed amendment in relation to the company's planned development.

The conference constituted a meeting because it was attended by a quorum of the agency purposely scheduled as a prearranged gathering and, consequently, the Sunshine Act was violated because the meeting where deliberations occurred was closed to the public.

The main reason for meeting outside of the sunshine was driven by the fact that one recently appointed commissioner felt he was not adequately prepared to vote at a public hearing. The court was cognizant that public officials do have a right to meet in meetings that are not necessarily public meetings, noting "supervisors are not restricted to information furnished at a public meeting. A supervisor has the right to study, investigate, discuss and argue problems and issues prior to the public meeting at which he may vote. Nor is a supervisor restricted to communicating with the people he represents .... He can talk with interested parties as does a legislator ... Nor is a supervisor prohibited from listening to and talking with the applicant for zoning change ... If a supervisor recognizes a problem, he is free to relate it and discuss it with all interested parties." Had this not been a quorum of the council, the meeting more than likely would have been permissible.

A final point in this case involved the discretion of the lower court with respect to the relief it may grant. Act 84 grants discretion to courts to invalidate any or all official action taken at a closed meeting. The decision noted that the act does not expressly permit courts to invalidate official action taken at a public meeting occurring <u>after</u> a private meeting held in violation of Section 13.

"Although the Sunshine Act's purpose is to discourage private meetings on agency business followed by a rubber stamp public hearing, the legislature has apparently provided no remedy to achieve this purpose beyond summary criminal proceedings against agency members.

"This court is not prepared to decide -- because this case does not require it, that if a decision is reached at an unlawful private meeting, the body is disabled from reiterating the same decision at a subsequent public meeting. In drafting the act, the legislature failed to define whether a private meeting which violates the Act taints a later open meeting and decision on the same agency business, or whether the later open meeting may have some curative affect on the early violation. Taking into consideration the purpose of the act, legislative clarification on this particular point would be desirable."

13. Bradford Area Education Assoc. v. Bradford Area School District, 132 Pa. Cmwlth. 385, 572 A.2d 1314 (1990); School Law Information Exchange, Vol. 27, No. 31 (1990).

The school board discussed matters in a nonpublic session and then later voted upon them at a properly scheduled and advertised public meeting. The subsequent litigation was brought to enjoin the action of the board, which voted to close several buildings and furlough several teachers because of declining enrollments.

Commonwealth Court held that the Bradford County court did not abuse its discretion in refusing to set aside the school board's decision where the district had held two nonpublic meetings at which the topic was discussed since the board thereafter held several other public meetings before voting to close some schools and layoff several teachers.

The court also noted that the appeal was not filed within 30 days of the meeting or 30 days from discovery of any improper action taken pursuant to Section 13 of Act 84.

14. Lawrence County v. Brenner, 135 Pa. Cmwlth. 619, 582 A.2d 79 (1990), appeal denied 527 Pa. 652, 593 A.2d 423, appeal denied 527 Pa. 656, 593 A.2d 426; School Law Information Exchange, Vol. 27, No. 97 (1990).

In this case the court held that the county could discuss the closing of a nursing home in an executive session under the Sunshine Act because the closing was related to the negotiations that the parties were engaged in. Thus, it was proper pursuant to Section 8(a)(2).

The court also held that, if a vote was improper in an executive session, it could be cured at a later public meeting. The court noted that "otherwise governmental action in an area would be gridlocked with no possible way

of being cured once a Sunshine Act violation was found to have occurred." This comment should be compared to comments arising in other cases where the courts have lamented the fact that there does not seem to be any other relief they can grant.

15. Moore v. Township of Raccoon, ___ Pa. Cmwlth. ___, 625 A.2d 737 (1993).

This case reveals the frustration that some judges have for violations which are cured at subsequent public meetings. The facts are as follows:

The township's board of supervisors asked the planning commission to review the junkyard ordinance. The commission held public meetings during which participants discussed proposed changes to the ordinance. Thereafter, the chairman of the commission arranged for the members of the commission to meet at her home on Feb. 19, 1991. The meeting was not advertised and was not open to the public. The purpose of the meeting was for the commission to review recommended changes to the ordinance.

At the next public and advertised meeting of the commission, the commission favorably recommended a proposed junkyard ordinance for the consideration of the board of supervisors. Plaintiffs asked the court for an order enjoining the commission from recommending to the board of supervisors revisions that were discussed at the improper meeting at the home of the commission's chairman.

The lower court denied the request for the injunction on the grounds that the junkyard ordinance was not agency business under Section 3 of Act 84. It held that, even if it were agency business, the commission's later public meeting removed the taint of the closed meeting.

On appeal, Commonwealth Court concluded that the discussion by a majority of the commission's members at the closed meeting constituted a deliberation, therefore, the commission was required to conduct the meeting in the open pursuant to Section 4 of the act. The court stated that the commission's method of arriving at its proposal to submit to the board of supervisors was agency business because the discussion which resulted in the proposal related to the framing or preparation of laws as defined by Act 84. Therefore,the planning commission's submission of a recommendation, pursuant to the request of the board of supervisors, constituted an official action.

As noted, the commission later met in public and approved a recommendation to the board and the question was raised as to whether or not that vote was tainted by the prior improper nonpublic meeting.

The opinion written by President Judge Craig of Commonwealth Court, begrudgingly acknowledged that Section 3 of Act 84 and the court's decision in Ackerman v. Upper Mount Bethel Township (School Law Information Exchange, Vol. 27, No. 20 (1990)), required a decision declaring that the open meeting vote cured the violation of the act which occured at the meeting at the chairman's house.

> "Although this case may be factually different from the Ackerman case, in that there is clear evidence in this case that the commission changed its position during the course of the unlawful meeting, Ackerman nevertheless controls, because the commission held an open meeting after the closed meeting, at which time citizens could voice their opinion regarding the junkyard ordinance. In accordance with the legislative grant of discretion to the trial court to determine whether relief is warranted, and this court's decision in Ackerman, this court concludes that the trial court did not abuse its discretion by stating in the alternative that the objectors are not entitled to the injunctive or declaratory relief they seek."

One of the current controversies with the Sunshine Act is the seemingly easy ability to cure alleged improper actions by taking action at a subsequent public meeting. School directors should not be intentionally holding tainted meetings in violation of the Sunshine Act, assuming they can always successfully play the "curing card" if challenged and avoid all consequences. The court has discretion to go either way depending on the facts, and individual board members can be fined if in violation. And there is the ever present penalty of loss of respect for any local agency that intentionally or continually conducts improper private meetings.

Yet it is comforting to know that if inadvertent errors are made by virtue of holding meetings that are not properly advertised and/or not publicly held, such errors can be corrected by discussion and voting at a subsequent public meeting on the same topic.

Executive Sessions

16. Gowombeck v. City of Reading, 80 Berks Law Journal 295 (1988).

The City of Reading appointed four people, none of whom were members of council, to a committee to review emergency ambulance services. At various times the members of the Emergency Ambulance Service Review Committee met concerning the ambulance matter and met one time with council members to recommend to council that it accept none of the private contract proposals that the committee had reviewed. Council voted to accept the recommendation of the committee.

On April 14, 1987, at a pre-council meeting held in the chambers of the mayor, the members of the Review Committee, all council members and the city solicitor were present. Because of the confidential nature of matters to be discussed, the beginning of the meeting was held in executive session and not open to the public. The committee discussed the matter with city council informing them that, if council decided to engage a private contractor, a specific contractor was the best qualified.

On April 15, 1987, at its regular meeting, council passed a resolution authorizing the mayor to appoint that best qualified contractor as the sole provider of emergency ambulance services. At its next regular meeting on April 22, 1987, council passed a resolution disbanding the Emergency Ambulance Service Review Committee. Further, on April 22 and May 7, 1987, meetings were held in the city solicitor's office at which the solicitor, the assistant city solicitor, a representative of the city and representative from the company which would provide this service, met to discuss the agreement.

The petitioners sought to declare invalid all actions taken at the pre-council meeting on April 14, 1987, and the meeting between the health agency and city officials on April 22 and May 7, 1987, as well as another meeting held on May 6, 1987. Petitioners alleged that the city violated the Sunshine Act by failing to give notice, failing to conduct the meeting in open session and failing to maintain minutes of the meeting.

Several issues were resolved in this case. First of all, the county court concluded that the Review Committee was not an agency or a committee thereof since none of the four members of the Review Committee were members of council. Consequently, the Review Committee was not subject to the Sunshine Act.

With respect to meeting in executive session pursuant to Section 7, the court noted that the beginning portion of the pre-council meeting of April 14, relating to the

ambulance service, was properly held in executive session to discuss the prospect of engaging a private provider as well as the terms and conditions of the employees with the city solicitor because of the legal claim filed against the city regarding the ambulance service issues.

As to the meetings held on April 22, May 6 and May 7, 1987, the court held that these were not subject to the Sunshine Act either. These meetings which were not attended by any member of council did not constitute an agency within the meaning of the act. The court further stated, for the sake of argument, had the committee been "a committee thereof" that they did not meet the second part of the definition of an agency, namely, they were not authorized to take official action or render advice on matters of agency business. Rather they were designed to execute the council's authorization of engaging the contractor as a provider of ambulance service, subject to the approval of the solicitor of an agreement between the city and the contractor. The court classified these meetings as administrative action which did not come within Act 84's open meeting and written minutes requirements. Administrative action as defined is "the execution of policies relating to persons or things as previously authorized or required by official action of the agency, adopted at an open meeting of the agency." 65 P.S. Sec. 273.

17. St. Clair Area School District v. St. Clair Area Education Assoc., ___ Pa. Cmwlth. ___, 552 A.2d 1133 (1988); affirmed per curium ___ Pa. ___, 579 A.2d 879 (1990); School Law Information Exchange, Vol. 25, No. 74 (1988).

Commonwealth Court held that the school district committed an unfair labor practice when the school board failed to ratify a tentative contract at a public board meeting that a majority of the board agreed to at a nonpublic meeting in the county courthouse.

In comparing this opinion to later decisions of the court it is evident that this case was decided to meet this unusual situation. The school district argued that the tentative agreement had no legal effect because it did not take place at a public meeting, duly advertised pursuant to the Sunshine Act. The district was in court-ordered bargaining and, at the request of the judge, five members of the board agreed to a tentative contract in the courthouse. When the full board voted on the contract at a public meeting, the majority of the board including one of the five present in the courthouse vote did not support the

tentative agreement. Such a result could have been avoided by not having a quorum at the courthouse.

Commonwealth Court noted that the Public Employee Relations Act and the Sunshine Act were designed to accomplish different results, saying "it was never the purpose of the Sunshine Act to compel negotiations of labor contracts." As a matter of fact, the court noted that Section 8(a)(2) of the act specifically permitted an agency to hold collective bargaining sessions outside of an open meeting. The court concluded that the Labor Board reasonably found that the school district was not exercising good faith in its negotiations when a majority of the nine members of the school board approved the tentative agreement in a nonpublic session and subsequently some members changed their vote at a public meeting.

18. The Reading Eagle Co. v. Council of the City of Reading, ___ Pa. Cmwlth. ___, 627 A.2d 305 (1993); School Law Information Exchange, Vol. 30, No. 57 (1993).

This case addresses the issue of why executive sessions can be held pursuant to Section 8 of Act 84, and how specific an explanation must be given. The city council called for an executive session during an open meeting to discuss matters of litigation. A reporter from the newspaper present at that meeting objected to the impending closed meeting because the term "litigation" was not defined. The city held the executive session anyway.

The court began its discussion of the notice requirements under Section 8 by noting that this section is an acknowledgment that the public would be better served in certain matters if the governing body had a private discussion of the matter prior to public resolution. The court noted that litigation was one of those issues. Knowledge of litigation strategy, availability of evidence and witnesses to prove or defend a case or the amount of settlement need not be discussed in public.

However, the public does have a right to know what matter is being addressed in those sessions. To decide how much the public is entitled to know about litigation or personnel or the purchase of real estate, the court relied on Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So. 2.d 107 (Miss. 1989). In that case, the Supreme Court of Mississippi noted that specificity was necessary because:

> "The reason given, of course, must be meaningful. It must be more than some generalized term which in

reality tells the public nothing. To simply say 'personnel matters' or 'litigation' tells nothing. The reason stated must be of sufficient specificity to inform those present that there is, in reality, a specific, discrete matter or area which the board had determined should be discussed in executive session .... When a board chairman tells a citizen he may not hear the board discuss certain business, he is taking liberties with the rights of that citizen, and the reason given for citizen can understand. To permit generalized fluff would frustrate the very purposes of the Act."

Commonwealth Court then determined that the General Assembly intended that the public be able to determine, from the reason given, whether they are being properly excluded from executive sessions and concluded that the reasons must be specific, indicating a real, discrete matter that is best addressed in private. In answering the city council's concern about this burden placed upon it, the court noted that if the General Assembly made government too open, then the city council should direct that argument to the General Assembly rather than to the court.

Finally, the court noted in a footnote that, with respect to identifiable complaints or threatened litigation, the general nature of the complaint has to be announced when an executive session is called to discuss it. "That level of identification that is appropriate because the action has not been or may not be filed. By announcing the general reason for the executive session, e.g., 'to discuss a threatened personal injury suit,' the public is informed that there is a legitimate reason for the executive session without adversely affecting the city council's ability to protect the public's interest."

Who Can Sue And How

19. Jones v. Clearfield Area School District, (C.P. Clearfield County 1988); School Law Information Exchange, Vol. 26, No. 54 (1989).

This case involved a lawsuit brought to enjoin the awarding of a busing contract under the Sunshine Act. The court found no violation of the act where the facts showed that the contract was awarded to the lowest bidder at a public meeting and the specific bidder was identified at a later meeting which was an executive session called for the purposes of litigation. The court granted the school

district's motion for summary judgment, finding that there was no basis to hold that the school district was in violation of the Sunshine Act.

20. Mistick v. City of Pittsburgh, 130 Pa. Cmwlth. 234, 567 A.2d 1107 (1999), appeal denied 527 Pa. 606, 589 A.2d 695; School Law Information Exchange, Vol. 27, No. 21 (1990).

Commonwealth Court held in this case that a writ of summons filed within 30 days from the date of the alleged unauthorized meeting pursuant to Section 13 of the act was a "legal challenge" for purposes of questioning the validity of a meeting held by the city council under the Sunshine Act.

21. Conners v. West Greene School District, ___ Pa. Cmwlth. ___, 569 A.2d 978 (1989), allocatur denied ___ Pa. ___, 581 A.2d 574 (1990); School Law Information Exchange, Vol. 27, No. 32 (1990).

This case centered on whether the school board violated Section 4 of the act in adopting a budget. The challenge was based on an allegation of a Sunshine Act violation as reported in a newspaper article which stated "a motion to cut the programs, however, first was defeated. Only after a brief recess, during which several board members grouped together apparently to discuss the matter, was the motion again introduced and approved." (emphasis added).

The court would not grant relief on the facts as they were pled on this particular point. The court noted that the appellants alleged only that, at the meeting, the board members apparently discussed the matter. The court concluded that even had they discussed adoption of the budget, this would not constitute a violation of the law.

The court noted with approval the following opinion authored by the trial judge, that "there is a substantial difference between discussion and deliberation. A school board member is not foreclosed by the Act from discussing and debating informally with others, including school board members the pros and cons of particular proposals and matters that may be on the board's agenda. The Act does not prohibit a member from inquiring, questioning and learning about the budget and other school issues only at a public meeting."

The court noted that the facts as they were pled in this case were the worst kind of hearsay and devoid of all

reasonable inferences since it was based on what was printed in a newspaper article and not based on personal knowledge.

22. Press-Enterprise, Inc. v. Benton Area School District, ___ Pa. Cmwlth. ___, 604 A.2d 1221 (1992); School Law Information Exchange, Vol. 29, No. 24 (1992).

Here, Commonwealth Court held that a newspaper had standing to challenge an alleged Sunshine Act violation by the school board. The court noted that Section 15 of the act contains a specific provision for standing and further noted that a "person" includes a corporation such as the newspaper in the case at bar. Therefore, the newspaper did have standing to sue in this case.

The case was remanded to the lower court for further proceedings to determine whether or not the board violated the Sunshine Act in meeting in private session to interview prospective candidates for the board. This issue recently has been decided in a county court case, Cumberland Publishers, Inc. v. Carlisle Area School District, (C.P. Cumberland County 1993); School Law Information Exchange, Vol. 30, No. 65 (1993).

23. Tredyffrin-Easttown School District v. Valley Forge Music Fair, ___ Pa. Cmwlth. ___, 627 A.2d 814 (1993).

This was a tax case but it also decided what may be an important Sunshine Act issue. While the case concerned the former Sunshine Act, the result would arguably be the same under the current law.

Commonwealth Court held that while a school district was an agency of the commonwealth, it was not an agency as defined in the old law. Consequently, individual school board members were necessary parties and should have been named individually in a suit brought against the district challenging actions of the board as being in violation of the Sunshine Act. Since individual school board members were not named, the trial court erred in deciding whether the board violated the act.

The definition of agency under both laws is virtually the same, as is the requirement for agencies to take official action at open, public meetings.

Voting By Speaker Phone

24. Babac v. Pennsylvania Milk Marketing Board, ___ Pa. ___, 613 A.2d 551 (1992); School Law Information Exchange, Vol. 29, No. 90 (1992).

The Supreme Court of Pennsylvania held that pursuant to Section 4 of Act 84, a quorum (five) can consist of one or more members not physically present at the meeting but who nevertheless participate in the meeting. The quorum can take official action, provided that the absent members are able to hear the comments of and speak to all those present at the meeting, and that all those present at the meeting are able to hear the comments of and speak to the absent member(s) contemporaneously.

This is perhaps one of the more surprising decisions reached by appellate courts in matters involving the Sunshine Act as it is such a radical departure from the accepted norm with respect to how public meetings are held. Whether school boards should follow this case is debatable at best. While the Sunshine Act permits this for an agency like the state's Milk Marketing Board, the School Code may not necessarily permit it for school directors.

First, Section 319 of the School Code, 24 P.S. Sec. 3-319, provides that a board member who neglects or refuses to attend two successive regular meetings of the board may be removed from office by the remaining members of the board (with some exceptions not here relevant). It seems reasonable that a court might construe this as requiring physical presence.

Second, Section 422 of the School Code, 24 P.S. Sec. 4-422, provides that a quorum must be present to conduct business. The Milk Marketing Board is not subject to any similar provision since it is not regulated by anything like a School Code.

Since these School Code provisions have not been reviewed by any court in tandem with the Sunshine Act, school districts probably should err on the side of caution and not allow speaker phone voting.

Babac does not say that governing bodies must allow such use of speaker phones. That is left for another day. All it says is that such a practice is permissible under the Sunshine Act for the Milk Marketing Board.

If boards are going to allow such a practice, then, pursuant to its rule-making authority per 24 P.S. Sec.

4-407, they should adopt policy setting forth (1) whether such a practice will be permitted; (2) under what circumstances; and, (3) what procedures will be used.

Case Law – Right-To-Know Act

Act 212 of 1957, the Right-To-Know Act (65 Purdon's Statutes, Secs. 66.1-66.4), is set forth in Appendix B of this booklet. The act pertains to what types of information, such as minutes, vouchers and bills, are available for inspection and copying by citizens of the commonwealth.

The following are summaries of some of the most recent cases decided pursuant to the act, some of which also involve aspects of the Sunshine Act. For a review of some earlier cases under the Right-To-Know Act (1957-1985) see Appendix C.

1. Schultz v. The Board of Supervisors of Jackson Township, ___ Pa. Cmwlth. ___, 505 A.2d 1127 (1986), School Law Information Exchange, Vol. 23, No. 31 (1986).

Commonwealth Court, citing the Supreme Court of Pennsylvania, held that Section 4 of the act, which provides for an appeal from the denial of access to information, constitutes the exclusive remedy for a person denied the right to examine and inspect public records, and also held that normal civil procedure discovery rights were not available.

2. However, in Commonwealth of Pennsylvania v. Kauffman, ___ Pa. Super. ___, 605 A.2d 1243 (1992); School Law Information Exchange, Vol. 29, No. 69 (1992), the Superior Court held that defendants in a civil action could see the prosecutor's file from a criminal action to aid them in defending the civil action instituted against them. The court held that they were not seeking the information as citizens under the Right-To-Know Act, but rather sought to use the Rules of Civil procedure to aid them in defending an action instituted against them.

3. Steele v. Commonwealth of Pa., Department of Environmental Resources, ___ Pa. Cmwlth. ___, 548 A.2d 1337 (1988); School Law Information Exchange, Vol. 26, No. 8 (1989).

A memorandum written by a lawyer in the attorney general's office who was not a decision maker, was not a public record available for public inspection.

4. Vartan v. Department of General Services, ___ Pa. Cmwlth. ___, 550 A.2d 1375 (1988); School Law Information Exchange, Vol. 26, No. 16 (1989).

An unsuccessful bidder had a right to see a list of those responding to a request for proposals. Such a list is a public record.

However, he was not entitled to see correspondence and memoranda concerning the request for proposals because he failed to show that they formed the basis of the department's determination. If the information sought were an essential component of a decision, it would be considered public information.

5. Easton Area Joint Sewer Authority v. The Morning Call, Inc., ___ Pa. Cmwlth. ___, 581 A.2d 684 (1990); School Law Information Exchange, Vol. 27, No. 71 (1990).

Commonwealth Court upheld the county court decision, ordering the release of a tape recording of an executive session to the media.

Obviously, this is a good reason not to tape executive sessions. No law requires the tape recording of or taking minutes during executive session. But if board members choose to do either, this decision suggests that the tape recording (and possibly the minutes) are subject to disclosure to any citizen under Act 212.

6. Anders v. Commonwealth of Pa., Department of Treasury, ___ Pa. Cmwlth. ___, 585 A.2d 568 (1991); School Law Information Exchange, Vol. 28, No. 28 (1991).

Unclaimed, uncashed check lists of the Treasury Department are subject to disclosure under the law.

7. Mirror Printing Company, Inc. v. Altoona Area School District, 148 Pa. Cmwlth. 168, 609 A.2d 917 (1992); School Law Information Exchange, Vol. 29, No. 51 (1992).

Commonwealth Court held that the Right-To-Know Act excluded from the definition of a public record those documents which may be harmful to a person's reputation or personal security. It was held that settlement of a disciplinary matter was exempt from disclosure.

8. However, in The Morning Call, Inc. v. Lower Saucon Township, ___ Pa. Cmwlth. ___, 627 A.2d 297 (1993); School Law Information Exchange, Vol. 30, No. 62 (1993), Commonwealth Court held that a settlement agreement between a township and a person who alleged that his civil rights were violated by the township police, was a public record subject to inspection under the law.

9. And, in Keenheel v. Commonwealth of Pa., Pa. Securities Commission, ___ Pa. Cmwlth. ___, 579 A.2d 1358 (1990); School Law Information Exchange, Vol. 27, No. 92 (1990), Commonwealth Court would not invalidate a settlement of an employee termination reached in a meeting held in violation of the Sunshine Act. The court did not address a clause in the agreement indicating it would not be publicly disclosed under the Right-To-Know Act.

10. Nittany Printing & Publishing Co., Inc. v. Centre County Board of Commissioners, ___ Pa. Cmwlth. ___, 627 A.2d 301 (1993); School Law Information Exchange, Vol. 30, No. 63 (1993).

A solicitor's opinion is only advice and not an essential component of an agency's decision and, therefore, not a public record. To be considered an essential component of an agency decision, the decision must have been contingent on the information contained in the document and could not have been made without it.

The court noted that "contrary to illusions that some solicitors try to create, a legal opinion, absent some statutory requirement, is not a prerequisite to any decision reached by an agency. Much to many solicitors' chagrin, an 'agency' is not required to obtain a legal opinion or even follow it once obtained, albeit at the agency and officers risk."

The fact that a commissioner said he relied on an opinion in voting was not objective evidence that it was an essential component of a decision. Furthermore, one commissioner was not an agency.

Questions & Answers

Some Definitions

Q: What agencies are covered by the provisions of the Sunshine Act?

A: The law contains a fairly extensive list of state and local bodies which are subject to its provisions; however, for school districts, intermediate units and area vocational-technical schools, the act pertains to the governing board and all committees thereof which are authorized to take official action or to render advice on matters of agency business.

This means, as a practical matter, that all committees of a school board (such as those for budget, transportation and curriculum) must comply with the provisions of the act. Advisory committees created by the school board (such as the district's strategic planning committee) and other school-related organizations (such as the PTA and band boosters) would not be considered agencies for the purposes of the Sunshine Act.

Q: What meetings of public agencies does the Sunshine Act govern?

A: The definition of meeting in the act is any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action. Several words in that definition are critical: The session must be prearranged, meaning that a chance encounter at a school event or a social gathering, for instance, would not constitute a meeting, even if a quorum were present. The session also must be held with the intent to deliberate, which the act defines as discussion held for the purpose of making a decision. Thus, a meeting is a gathering of a quorum of an agency where public business is intended to be transacted.

Q: What is agency business and official action under the Sunshine Act?

A: Agency business covers the formal development and enactment of laws, policy and regulations, the incurring of liability (through a contractual agreement, for instance) or adjudication of rights. Official action includes final decisions on those matters of agency business, along with the establishment of policy, the development of recommendations required by law and the taking of votes.

Q: Which meetings of agencies are required to be open to the public and which are not?

A: The general rule of thumb under the Sunshine Act is that all meetings must be open to the public unless specifically authorized to be closed -- namely, executive sessions and conferences.

Executive Sessions

Q: What are the reasons executive sessions may be held?

A: Public agencies may conduct executive sessions to discuss enumerated, sensitive issues: collective bargaining, the hiring, discipline and removal of employees and public officers, litigation and the acquisition of real estate. If board members can remember LEAR (standing for Labor, Employees, Attorney and Real Estate), they easily will be able to recall the reasons for holding executive sessions.

Q: Must a school board meet in executive session whenever a LEAR topic is to be considered?

A: Not necessarily. The Sunshine Act does not require any public agency ever to meet in closed session; it only permits it to do so for the enumerated reasons. Executive sessions are to be held for the purpose of discussing the LEAR topics, or other matters which, if reviewed in public, would violate confidentiality or a privilege protected by law.

Q: What procedures must be followed to hold an executive session?

A: Under the Sunshine Act, executive sessions may be held during or immediately following an open meeting of an agency, or they may be called for a specified future time. The act requires that the reason for holding the executive session be announced at the open meeting immediately prior to or subsequent to the executive

session. A 1993 Commonwealth Court decision, The Reading Eagle Co. v. Council of the City of Reading, (School Law Information Exchange, Vol. 30, No. 57 (1993)), held that an agency must be specific in giving those reasons. Therefore, it probably is necessary to announce that the executive session will be held to discuss the hiring of an assistant superintendent rather than for personnel reasons, for example. If an executive session is not called for a specific, future time, then all members of the school board must be given at least 24 hours advance notice of the date, time, location and purpose of the meeting.

Q: What can a school board discuss in executive session concerning collective bargaining matters?

A: The Sunshine Act permits boards to receive information from their negotiating team, to discuss strategy concerning bargaining and to conduct negotiations while meeting in executive session.

Q: Isn't a meeting of the board with its solicitor automatically considered an executive session?

A: No. The Sunshine Act permits boards to meet in executive session with their solicitor and other professional advisers to consider information or to discuss strategy concerning "litigation or ... issues on which identifiable complaints are expected to be filed." In other words, the presence of an attorney or other professional adviser does not, in itself, sanction an executive session. The meeting must be held for the purpose of discussing a current or potential lawsuit involving the school district or its employees.

Q: Which professional advisers may a board meet with in executive session and/or conference?

A: The law does not specify, but again such meetings must be held in conjunction with pending or threatened litigation, and not simply to discuss matters within the professional's area of expertise. For instance, the board could meet with its architect concerning a lawsuit filed regarding a new school building, but could not hold a closed, executive session simply to discuss his or her proposal for such a building project.

In fact, in Malloy v. Boyertown Area School District (School Law Information Exchange, Vol. 30, No. 50 (1993)), Commonwealth Court concluded that construction management services must be subject to the open, competitive bidding requirements of the

School Code. This decision appears to require that other professional services be similarly procured, as well. Although that case did not involve a challenge under the Sunshine Act, it does reinforce the interpretation that executive sessions cannot be held simply to consult with architects and other professional advisers about proposals they have submitted.

Q: Must minutes be kept of conferences and executive sessions?

A: No. The Sunshine Act requires that minutes be kept of open meetings only. Some agencies do retain tape recordings of executive sessions and conferences to provide a defense against potential legal challenges. The value of maintaining such records must be weighed against the possibility of compromising the confidentiality of the discussion which had been held in closed session, since there is case law suggesting that these recordings are subject to disclosure under the Right-To-Know Act. Easton Area Joint Sewer Authority v. The Morning Call, Inc., ___ Pa. Cmwlth. ___, 581 A.2d 684 (1990); School Law Information Exchange, Vol. 27, No. 71 (1990).

Q: Can a board convene in executive session to discuss who they would like to choose to fill a vacancy on the board?

A: Yes. At least one case decided by a county court, Cumberland Publishers, Inc. v. Carlisle Area School District (School Law Information Exchange, Vol. 30, No. 65 (1993)), interpreted the language of the Sunshine Act permitting such discussion to take place in executive session. Specifically, that language states, "To discuss any matter involving the employment, appointment...of any specific prospective public officer..." The court also looked at Section 315 of the School Code dealing with vacancies on the board and, citing a 1967 Pennsylvania Supreme Court decision, concluded that filling a vacancy is the same as making an appointment.

Q: A board is in the process of trying to select three finalists for the office of superintendent, from among a list of five semi-finalists. Can they do this in executive session? By reducing that list from five to three, aren't they in essence voting and, if so, must such a vote be done in public?

A: According to The Morning Call, Inc., v. The Board of School Directors of the Southern Lehigh School District (School Law Information Exchange, Vol. 30,

No. 47 (1993)), decided by Lehigh County Court, reducing the list from five to three can be done in executive session. Actually the term voting in executive session is equivalent to an oxymoron. Discussions in executive session (including straw votes) are merely indications of how a person eventually intends to vote in the sunshine, whether that voting in the sunshine occurs minutes later or days later. Indications of how members may vote in the sunshine based on a straw vote taken in executive session are not binding.

Conferences

Q: What are conferences?
A: As mentioned previously, all meetings of agencies must be open to the public unless specifically authorized to be closed. In addition to executive sessions, school boards also are permitted to participate in closed conference meetings, which are defined as "any training program or seminar ... organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities" (emphasis added). These sessions may be meetings of a single school board or they may be programs which school directors attend from a number of districts.

Q: What can be discussed at conference meetings?
A: There are no restrictions on the topics which may be covered at a conference, provided the meeting is held for the purpose of giving information and not for deliberating matters pending before the board. Therefore, a conference could be convened to permit the district's administrative staff to present information to the board and to enable school directors to ask clarifying questions. However, the board would not be permitted to attempt to reach a consensus on a matter at a conference meeting; that process of deliberation must take place at a meeting open to the public. In addition to executive sessions, Conferences provide a CLEAR reminder of the reasons a school board may meet in closed session.

Q: A board would like to be able to candidly discuss how they interact with each other and the superintendent and other key administrators. Must such a self-assessment process take place in the sunshine?
A: No. The language in the executive session portion of the Sunshine Act which allows the board to "discuss

any matter involving...evaluation of performance...of any current public officer..." perhaps would allow the board to meet privately to discuss personality issues relating to the operational style of the board. Boards should consult with the district's solicitor.

Rights of Public/Media

Q: What right does the public have to speak at open meetings?

A: Under Act 20 of 1993, an amendment to the Sunshine Act, the "board ... of a political subdivision" must provide "a reasonable opportunity" at all regular and special open meetings for residents and/or taxpayers to comment on "matters of concern, official action or deliberation which are before the board." Because agencies have the right to adopt rules governing the conduct of their meetings, a school board may, by official action, decide what constitutes a reasonable opportunity for public comment. This could be in the form of rules specifying the place on the agenda when a public comment period will be allowed, how long each person may speak and procedures for seeking permission to speak. If insufficient time is available, a public comment period may be deferred to the next regular meeting or may be scheduled for a special meeting.

The language of the 1993 act is somewhat confusing, since it refers specifically to the board of a political subdivision and does not use the term agency, which already appeared in the act and includes committees. It can be argued that only the governing body (school board) is therefore required to comply with the public comment provisions. PSBA believes, however, that any open meeting of an agency covered by the Sunshine Act should include a reasonable opportunity for public comment.

Q: A person who lives outside the district has requested the opportunity to address the board to advocate several educational programs she enthusiastically believes all school districts should have. Can she be denied the right to speak?

A: Yes. Act 20 of 1993 allows the board to restrict comments by the public to residents and/or district taxpayers.

Q: May the public or news media disrupt an open meeting to comment on or object to the actions taking place?

A: In general, no. The open meeting is one of the agency, which the public is entitled to attend. The

right to speak, granted by Act 20 of 1993, is limited to that reasonable opportunity granted by the agency itself. The Sunshine Act's reference to adopting rules not only for the conduct of meetings but for the maintenance of order expressly permits an agency to control outbursts from the audience or other unruly behavior. Act 20 does permit any person "to raise an objection at any time to a perceived violation" of the Sunshine Act at any open meeting, although the manner of doing so presumably could be regulated by the rules adopted by agency for its meetings.

Q: What restrictions may an agency place on the news media or others who wish to videotape or record an open meeting?

A: Act 84 permits anyone attending an open meeting to use recording devices. The law also authorizes the board to adopt by official action and to enforce rules necessary for the conduct of its meetings and the maintenance of order. This could include specifying a location in the room for reporters and recording devices. Because the law permits recordings to be made of all the proceedings, an agency would not be permitted to restrict when audio and video recordings can be made during an open meeting.

Q: The public is allowed to tape record sunshine sessions. Should the district be taping too?

A: There is nothing to prohibit the district from taping the sessions. PSBA data indicates about one-third of the 501 districts record the entire meeting and keep the tapes for years, as back-up to official written and approved minutes. One-third tape merely as a back-up to their own note-taking efforts and the tapes are erased after the written minutes are approved. The remaining one-third never use a tape recorder.

Q: Must a copy of the agenda be furnished to members of the media or public who request it in advance of the meeting?

A: No. The law simply requires notice of the time, date and location of open meetings be provided to members of the public and the media who supply a self-addressed stamped envelope for that purpose.

Common courtesy suggests those in attendance at the meeting be furnished with a copy of the agenda. But, assuming the agenda is provided at the meeting, the audience is not entitled to receive copies of all supporting documents which board members normally receive.

Q: Is the news media entitled to attend every open meeting of an agency?

A: Yes. The news media is considered part of the public and, therefore, has a legal right to be present at every open meeting.

Advertising And Other Notices

Q: Does the 24-hour notice requirement to have an executive session pertain to executive sessions that may occur during an open (and previously advertised) sunshine session?

A: No. The 24-hour notice to board members is only required if the need to schedule an executive session arises between open meetings. If the need arises during an open meeting, the board can decide to go into executive session for as long as necessary, upon motion, duly seconded and approved by the majority of those present and voting.

Q: If there only is a weekly newspaper which publishes each Monday and the board wants to schedule a special meeting for Wednesday, are they at the mercy of the weekly newspaper's schedule?

A: No. Publication must be in a newspaper of general circulation as defined by the Sunshine Act (Section 3), which in turn references Section 101 of the Legal Notices Act (Act 160, 1976). (See Appendix D.) Section 101 defines a newspaper of general circulation as "a newspaper issued daily or not less than once a week..." (emphasis added). Therefore, when faced with the need to advertise and conduct an open meeting not previously advertised in the local weekly, the board can advertise in the daily newspaper that enjoys the greatest circulation in their area. The weekly newspaper can make sure it still gets notice (if not the advertising revenue) by furnishing the district with a self-addressed stamped envelope pursuant to Section 9(c) of the Sunshine Act.

Voting

Q: Is there one prescribed method of voting required by the Sunshine Act or the School Code?

A: No. Boards are free to choose, as a matter of policy, the method or methods which they prefer to use to vote on different kinds of matters. Methods include, but are not limited to, seniority, lack of seniority, alphabetically, from left to right, roll call,

simultaneous hand raising and simultaneous voice vote. Many boards use a rotating alphabetical roll call procedure because they feel it is the fairest. Everyone gets to vote first and last and everything in between. There is no requirement in law that the president vote last.

Q: Is there ever a time when a secret written ballot may be cast by a school board member at a public meeting?

A: Probably not. The Sunshine Act requires all votes to be publicly cast. Some solicitors have suggested that it is appropriate for each board member to mark a preprinted ballot when voting for president or vice president of the board. Those ballots should then be collected in full public view by someone, such as the solicitor, who reads and announces the results. The ballots are thus "publicly cast" and should be made a part of the minutes, and therefore open to inspection by any citizen of Pennsylvania. Those who favor this method, in addition to being of the opinion that it is legal, cite the advantage that in voting for the office of president or vice president, a certain amount of privacy ought to be afforded and since Section 508 of the School Code does not cover election of president and vice president of the board, the requirement to show how each member voted is not relevant.

Q: Must there be a roll call by the board secretary on every issue that comes before the board in its sunshine meetings?

A: No. The Sunshine Act merely talks about the need to publicly cast votes. Section 508 of the School Code, which is erroneously believed by many to require a roll call vote, does not. Section 508 says "the affirmative vote of a majority of all members of the board of school directors in every school district, duly recorded, showing how each member voted, shall be required to take action on the following subjects:..." (emphasis added).

There are several cases, including one Pennsylvania Supreme Court decision, Spann v. Joint Boards of School Directors, 381 Pa. 338 (1955), which address how the minutes have to reflect the type of vote conducted. All these cases indicate that if the voting was unanimous, that the names of the members in attendance need not be called or recorded name by name. Unanimous votes can occur by voice vote or a show of hands.

"Ayes" and "nays" must be recorded in the minutes by name when there are members voting both in the affirmative and the negative and/or abstaining, regardless of how the vote is taken. One way to expedite the voting process is for the board president to say, (even though a roll call vote is never required by Section 508 of the School Code) "This is a roll call vote. You will all be recorded as voting 'aye' unless I hear you vote 'nay' or I hear you say 'I abstain'." (emphasis added).

Minutes

Q: How detailed do a school board's minutes have to be?
A: The Sunshine Act simply requires that the substance of the board's business be recorded. At a minimum this would require recording all motions, both substantive and procedural, including who made and seconded each motion and their eventual resolution. Unless board policy requires more, it is not necessary to record the pros and cons, much less exactly what each board member said on any issue.

Q: How does a committee's minutes get approved and recorded?
A: It is suggested that these minutes be read into the record at the next open meeting of the entire board. This could be accomplished in response to an agenda item that calls for committee reports. Once the minutes are read, they are subject to approval by those committee members who attended. Once approved, a motion should be made to incorporate the approved minutes of that committee's meeting into the minutes of the full board's open meeting in progress. Following approval of the minutes, a motion to adopt the recommendations of the committee will be approved (or disapproved) by a vote of the entire board.

Miscellaneous

Q: What can be done about a board member who constantly engages in inappropriate conduct such as monopolizing meetings, filibustering, playing to the press and interrupting those who have the floor?
A: There are several parliamentary procedure techniques. (See Chapter 3.) It may be appropriate for the board to convene in executive session and inform this board member that the majority of the board is not pleased with his actions which convey a negative image of the

district. It also is permissible, when thought necessary by the majority of the board, to publicly censure such a board member through the usual procedure of making a motion to that effect at the next open meeting, if this behavior persists after warnings issued in executive session.

Q: Must hearings conducted to discipline and/or dismiss employees of the district be held in the sunshine?

A: The decision to have a public or private hearing almost always is a decision of the employee facing charges, not the school board as the employer.

Q: Can the board discuss student discipline, including possible expulsion of individuals, in executive session?

A: There is nothing in the Sunshine Act which addresses discussion about specific students in executive session. Clearly students are not personnel. In most cases involving student behavior, the district, the student and the parents prefer to keep matters including expulsion hearings confidential. Most solicitors recommend confidentially dealing with student discipline issues based on Chapter 22 of the State Board of Education involving student rights and responsibilities and the Federal Educational Right to Privacy Act (F.E.R.P.A.). Almost always a student's right to privacy outweighs the public's right to know. Generally speaking, the media is equally sensitive and avoids identifying students who are minors by name.

Q: What are the penalties for violation of the Sunshine Act?

A: The law provides two. The courts can nullify actions improperly taken by the board and fine individual board members up to $100 each. Conviction of violation of the Sunshine Act is a summary offense. Alleged violations are adjudicated at the local district justice level. If individual members are found to have intentionally violated the law, an appeal can be filed with the local county court.

Q: All five incumbent school directors are running for re-election and have been invited, along with others who have filed, to speak at several "candidates' nights" sponsored by the League of Women Voters and the local teachers' association, among others. If all five show up, isn't that a quorum and therefore an open meeting that should be advertised?

A: No. Board members are free to attend or not attend. It's an individual choice, not a board decision or

board business. Even though the session is prearranged, the board has not called these meetings; other groups have. It should be obvious that the purpose of those who choose to attend is not "...for the purpose of...taking official action."

Q: Once a board president is elected, usually in the first week of December of each year at the so-called reorganization meeting, may the president be removed any time during that year?

A: Yes. Under rules of parliamentary procedure, it always is appropriate to entertain a motion to declare the position of the president to be vacant. If such a motion carries by a majority vote, then the next motion should be to nominate someone else to fill that vacancy for the remainder of the one-year term. Officers of the board are constitutional officers and can be dismissed by the board without any hearing or stated cause. Buell v. Union Twp. School District, 395 Pa. 567, 150 A.2d 852 (1959).

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"SUNSHINE ACT" – ENACTMENT
Act of 1986, P.L. 388, No. 84

Amended by Act 20 of 1993
Effective 8/15/93

AN ACT

Requiring public agencies to hold certain meetings and hearings open to the public; and providing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Sunshine Act.

Section 2. Legislative findings and declaration.

(a) Findings.--The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

(b) Declarations.--The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this act.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative action." The execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the agency. The term does not, however, include the deliberation of agency business.

"Agency." The body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business, of all the following: the General Assembly, the executive branch of the government of this Commonwealth, including the Governor's Cabinet when meeting on official policymaking business, any board, council, authority or commission of the Commonwealth or of any political subdivision of the Commonwealth or any State, municipal, township or school authority, school board, school governing body, commission, the boards of trustees of all State-aided colleges and universities, the councils of trustees of all State-owned colleges and universities, the boards of trustees of all State-related universities and all community colleges or similar organizations created by or pursuant to a statute which declares in substance that the organization performs, or has for its purpose the performance of, an essential governmental function and through the joint action of its members exercises governmental authority and takes official action. The term does not include a caucus nor a meeting of an ethics committee created under rules of the Senate or House of Representatives.

"Agency business." The framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.

"Caucus." A gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action in the General Assembly.

"Conference." Any training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.

"Deliberation." The discussion of agency business held for the purpose of making a decision.

"Emergency meeting." A meeting called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.

"Executive session." A meeting from which the public is excluded, although the agency may admit those persons necessary to carry out the purpose of the meeting.

"Litigation." Any pending, proposed or current action or matter subject to appeal before a court of law or administrative adjudicative body, the decision of which may be appealed to a court of law.

"Meeting." Any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.

"Official action."

(1) Recommendations made by an agency pursuant to statute, ordinance or executive order.

(2) The establishment of policy by an agency.

(3) The decisions on agency business made by an agency.

(4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

"Public notice."

(1) For a meeting:

(i) Publication of notice of the place, date and time of a meeting in a newspaper of general circulation, as defined by 45 Pa.C.S. § 101 (relating to definitions), which is published and circulated in the political subdivision where the meeting will be held, or in a newspaper of general circulation which has a bona fide paid circulation in the political subdivision equal to or greater than any newspaper published in the political subdivision.

(ii) Posting a notice of the place, date and time of a meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(iii) Giving notice to parties under section 9(c).

(2) For a recessed or reconvened meeting:

(i) Posting a notice of the place, date and time of the meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(ii) Giving notice to parties under section 9(c).

"Special meeting." A meeting scheduled by an agency after the agency's regular schedule of meetings has been established.

Section 4. Open meetings.

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 7, 8 or 12.

Section 5. Recording of votes.

In all meetings of agencies, the vote of each member who actually votes on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of roll call votes, recorded.

Section 6. Minutes of meetings, public records and recording of meetings.

Written minutes shall be kept of all open meetings of agencies. The minutes shall include:

(1) The date, time and place of the meeting.

(2) The names of members present.

(3) The substance of all official actions and a record by individual member of the roll call votes taken.

(4) The names of all citizens who appeared officially and the subject of their testimony.

Section 7. Exceptions to open meetings.

(a) Executive session.--An agency may hold an executive session under section 8.

(b) Conference.--An agency is authorized to participate in a conference which need not be open to the public. Deliberation of agency business may not occur at a conference.

(c) Certain working sessions.--Boards of auditors may conduct working sessions not open to the public for the purpose of examining, analyzing, discussing and deliberating the various accounts and records with respect to which such boards are responsible, so long as official action of a board with respect to such records and accounts is taken at a meeting open to the public and subject to the provisions of this act.

Section 8. Executive sessions.

(a) Purpose.--An agency may hold an executive session for one or more of the following reasons:

(1) To discuss any matter involving the employment,

appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting. The agency's decision to discuss such matters in executive session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(2) To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.

(3) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option.

(4) To consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.

(5) To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.

(6) For duly constituted committees of a board or council of trustees of a State-owned, State-aided or State-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

(b) Procedure.--The executive session may be held during an open meeting, at the conclusion of an open meeting, or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session.

(c) Limitation.--Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 7 shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 4.

Section 9. Public notice.

(a) Meetings.--An agency shall give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance of the meeting and shall give public notice of the schedule of its remaining regular meetings. An

agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice. Public notice is not required in the case of an emergency meeting or a conference. Professional licensing boards within the Bureau of Professional and Occupational Affairs of the Department of State of the Commonwealth shall include in the public notice each matter involving a proposal to revoke, suspend or restrict a license.

(b) Notice.--With respect to any provision of this act that requires public notice to be given by a certain date, the agency, to satisfy its legal obligation, must give the notice in time to allow it to be published or circulated within the political subdivision where the principal office of the agency is located or the meeting will occur before the date of the specified meeting.

(c) Copies.--In addition to the public notice required by this section, the agency holding a meeting shall supply, upon request, copies of the public notice thereof to any newspaper of general circulation in the political subdivision in which the meeting will be held, to any radio or television station which regularly broadcasts into the political subdivision and to any interested parties if the newspaper, station or party provides the agency with a stamped, self-addressed envelope prior to the meeting.

(d) Meetings of General Assembly in Capitol Complex.--Notwithstanding any provision of this section to the contrary, in case of sessions of the General Assembly, all meetings of legislative committees held within the Capitol Complex where bills are considered, including conference committees, all legislative hearings held within the Capitol Complex where testimony is taken and all meetings of legislative commissions held within the Capitol Complex, the requirement for public notice thereof shall be complied with if, not later than the preceding day:

(1) The supervisor of the newsroom of the State Capitol Building in Harrisburg is supplied for distribution to the members of the Pennsylvania Legislative Correspondents Association with a minimum of 30 copies of the notice of the date, time and place of each session, meeting or hearing.

(2) There is a posting of the copy of the notice at public places within the Main Capitol Building designated by the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(e) Announcement.--Notwithstanding any provision of this act to the contrary, committees may be called into session in accordance with the provisions of the Rules of the Senate or the House of Representatives and an announcement by the presiding officer of the Senate or the House of Representatives. The announcement shall be made in open session of the Senate or the House of Representatives.

Section 10. Rules and regulations for conduct of meetings.

Nothing in this act shall prohibit the agency from adopting, by official action, the rules and regulations necessary for the conduct of its meetings and the maintenance of order. The rules and regulations shall not be made to violate the intent of this act.

Section 10.1. Public participation.

(a) General rule.--Except as provided in subsection (d), the

board or council of a political subdivision or of an authority created by a political subdivision shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment on matters of concern, official action or deliberation which are or may be before the board or council. If the board or council determines that there is not sufficient time at a meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment, the board or council may defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting.

(b) Limitation on judicial relief.--If a board or council of a political subdivision or an authority created by a political subdivision has complied with the provisions of subsection (a), the judicial relief under section 13 shall not be available on a specific action solely on the basis of lack of comment on that action.

(c) Objection.--Any person has the right to raise an objection at any time to a perceived violation of this act at any meeting of a board or council of a political subdivision or an authority created by a political subdivision.

(d) Exception.--The board or council of a political subdivision or of an authority created by a political subdivision which had, before January 1, 1993, established a practice or policy of holding special meetings solely for the purpose of public comment in advance of advertised regular meetings shall be exempt from the provisions of subsection (a).

(10.1 added June 15, 1993, P.L. , No.20)

Section 11. Use of equipment during meetings.

(a) Recording devices.--Except as provided in subsection (b), a person attending a meeting of an agency shall have the right to use recording devices to record all the proceedings. Nothing in this section shall pronibit the agency from adopting and enforcing reasonable rules for their use under section 10.

(b) Rules of the Senate and House of Representatives.--The Senate and House of Representatives may adopt rules governing the recording or broadcast of their sessions and meetings and hearings of committees.

Section 12. General Assembly meetings covered.

Notwithstanding any other provision, for the purpose of this act, meetings of the General Assembly which are covered are as follows: All meetings of committees where bills are considered, all hearings where testimony is taken and all sessions of the Senate and the House of Representatives. Not included in the intent of this act are caucuses or meetings of any ethics committee created pursuant to the Rules of the Senate or the House of Representatives.

Section 13. Business transacted at unauthorized meeting void.

A legal challenge under this act shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which the act was violated, provided that, in the case of a meeting which was not open, no legal challenge

may be commenced more than one year from the date of said meeting. The court may enjoin any challenged action until a judicial determination of the legality of the meeting at which the action was adopted is reached. Should the court determine that the meeting did not meet the requirements of this act, it may in its discretion find that any or all official action taken at the meeting shall be invalid. Should the court determine that the meeting met the requirements of this act, all official action taken at the meeting shall be fully effective. The court may impose attorney fees for legal challenges commenced in bad faith.

Section 14. Penalty.

Any member of any agency who participates in a meeting with the intent and purpose by that member of violating this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding $100 plus costs of prosecution.

Section 15. Jurisdiction and venue of judicial proceedings.

The Commonwealth Court shall have original jurisdiction of actions involving State agencies and the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this act, by injunction or other remedy deemed appropriate by the court. The action may be brought by any person where the agency whose act is complained of is located or where the act complained of occurred.

Section 16. Confidentiality.

All acts and parts of acts are repealed insofar as they are inconsistent herewith, excepting those statutes which specifically provide for the confidentiality of information. Those deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matter related to the investigation of possible or certain violations of the law and quasi-judicial deliberations, shall not fall within the scope of this act.

Section 17. Repeals.

The following acts and parts of acts are repealed:

Act of June 21, 1957 (P.L.392, No.213), entitled, as amended, "An act requiring that meetings of the governing bodies of political subdivisions and of certain authorities and other agencies performing essential governmental functions shall be open to the public; requiring public notice of such meetings; and prescribing penalties."

Act of July 19, 1974 (P.L.486, No.175), entitled "An act requiring public agencies to hold certain meetings and hearings open to the public and providing penalties."

Section 18. Effective date.

This act shall take effect in six months.

RIGHT-TO-KNOW ACT
Act of 1957, P.L. 390, No. 212

AN ACT

Requiring certain records of the Commonwealth and its political subdivisions and of certain authorities and other agencies performing essential governmental functions, to be open for examination and inspection by citizens of the Commonwealth of Pennsylvania; authorizing such citizens under certain conditions to make extracts, copies, photographs or photostats of such records; and providing for appeals to the courts of common pleas.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. In this act the following terms shall have the following meanings:

(1) "Agency." Any department, board or commission of the executive branch of the Commonwealth, any political subdivision of the Commonwealth, the Pennsylvania Turnpike Commission, or any State or municipal authority or similar organization created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function.

(2) "Public Record." Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act. ((2) amended June 17, 1971, P.L.160, No.9)

Section 2. Every public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania.

Section 3. Any citizen of the Commonwealth of Pennsylvania shall have the right to take extracts or make copies of public records and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

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Section 4. Any citizen of the Commonwealth of Pennsylvania denied any right granted to him by section 2 or section 3 of this act, may appeal from such denial. If such court determines that such denial was not for just and proper cause under the terms of this act, it may enter such order for disclosure as it may deem proper.

(4 repealed insofar as inconsistent Jan. 6, 1970, 1969 P.L.434, No.185 and July 31, 1970, P.L.673, No.223; repealed in part Apr. 28, 1978, P.L.202, No.53)

Reprinted from the ***PSBA Bulletin,***
Volume 56, No. 6, December 1992.

APPENDIX C

board secretary's page

Public's right to inspect and copy certain records

It's no secret that public scrutiny of school boards has increased during this decade. Consequently, the executive committee of the Board Secretaries Department thought it would be appropriate to review the law which allows the public certain rights to inspect and copy public records.

The so-called "Right-to-Know Law" (65 P.S. 66.1 et seq.) was enacted in 1957. It defines a public record as "Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons...."

The act has an equally long definition of what a public record is **not** and a number of court cases over the last 35 years has helped clarify which documents may and may not be inspected. For example:

• "The contents of a teacher's personnel file maintained by the district did **not** constitute a minute, order or decision of the board of school directors and ... were not 'public records'" ...*West Shore School District v. Homick* (1976). See also *Stein v. Red Lion Citizens for Decency Inc.* (1989).

• The right to see a document is not based on any need to know. The person inquiring need not be a resident of your school district. The right is afforded to "Any citizen of the commonwealth" based merely "upon whether the documents sought are within the definition of a 'public record.'" *Marvel v. Dalrymple* (1978).

• "A list of kindergarten pupils (and addresses) enrolled for the coming year in a school district was required to be furnished, on request, to citizens of the district who desired to solicit the cooperation of the parents of such children in opposing the district's policies with regard to kindergartens." *Wiles v. Armstrong SD* (1974) and *Young v. Armstrong SD* (1976).

• "Individual salary records of employees are 'public records.'" *Kegel v. Community College of Beaver County* (1972).

Section 66.3 of the act provides that the board "shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats." A recent survey among board secretaries suggests that 25 cents a page seems to be a common price. This amount covers not only the cost of paper and use of the photocopy machine, but presumably factors in the administrative time required to find the records and copy them.

This section also permits the board to set policy which prohibits unsupervised searching for and/or review of the records to prevent tampering or destruction. This concept was reaffirmed in *Hoffman v. Pennsylvania Game Commission* (1983) where Commonwealth Court said that "the agency had discretion to determine the methods by which information sought could be best transmitted to the applicant." *Hoffman* also established the right of a citizen to obtain the "subscriber mailing list of *Pennsylvania Game News*, a state magazine expressly authorized by the Game Law . . . to an individual who presumably sought them for commercial purposes."

A similar conclusion was reached in *MacKnight v. Beaver Area School District* (1982) where the court ruled "the operator of a photography studio is entitled to the names and addresses of high school seniors despite the fact that he intends to use information to solicit photography business."

It's not unusual for districts to receive "fishing expedition" requests for all the minutes from the last 10 years or for every bill paid in constructing the high school. On the one

hand there is no question that a citizen is entitled to the minutes and vouchers. On the other hand, if it takes 20 hours to accomplish such a photocopying task, one could argue it is reasonable to suggest that a limitation can be placed on the amount of time per week that can be devoted to helping citizens search for and copy records.

Therefore a district policy, for example, might limit the public's right to review public documents to Monday, Wednesday and Friday between 1 and 3 p.m. Such a policy probably would be enforceable.

If your job description includes being custodian of district records, when in doubt about whether a request to inspect and/or photocopy should be granted you may want to delay granting that request until you have checked with the superintendent and/or solicitor. The act imposes no penalty for failure to comply; it merely offers the ultimate remedy to the citizen of obtaining a court order to inspect and/or copy the document requested, if deemed to be a public record.

Conversely, there can be some very serious consequences (including your discipline or discharge!) if you permit a document which is **not** public record to be inspected and/or photocopied, especially if access to or release of such information, in the words of the act "is prohibited, restricted or forbidden by statute, law, order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security." ♦

APPENDIX D

Legal Notice Requirements

Reprinted here is Act 160 of 1976 (45 Pa. C.S.A. § 101 et. seq.) providing for the publication of legal notices.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1.

Title 45, act of November 25, 1970 (P.L. 707, No. 230), known as the Pennsylvania Consolidated Statutes, is amended by adding parts to read:

TITLE 45

LEGAL NOTICES

Part

I. Preliminary Provisions
II. Publication and Effectiveness of Commonwealth Documents

PART I

PRELIMINARY PROVISIONS

Chapter		Section
1.	General Provisions	101
3.	Legal Advertising	301

Part I, Preliminary Provisions, consisting of Chapters 1 and 3, was enacted by Act 1976, July 9, P.L. 877, No. 160, § 1, effective in 60 days.

CHAPTER 1

GENERAL PROVISIONS

Sec.
101. Definitions.

§ 101. Definitions

(a) Definitions applicable to printing or newspaper advertising laws.—Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in:

(1) this title; or

(2) any other law relating to printing or newspaper advertising;

shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Advertisement." A printed public notice, relating to any matter, authorized by any person, which is published for a valuable consideration in a publication, and which may be required by law, rule, order, or decree of court, or resolution of any corporation, or unincorporated association, or by action of any government unit.

"Advertiser." Any person who orders and directs a notice or advertisement to be printed or published in a publication.

"Advertising rule." The line between, or which separates, any two advertisements or notices.

"Agate." A type 5½ type points in depth or height.

"Bourgeois." A type 9 type points in depth or height.

"Brevier." A type 8 type points in depth or height.

"Carrier." A person engaged for hire in the delivery of publications.

"Circulation." The number of copies printed, issued, sold, or subscribed for, by the da , week, month, or year, at a particular price for each copy, or for a series of issues over a definite period by any publication, but the term does not include copies exchanged for other publications or copies or issues circulated gratuitously.

"Classified advertising." Intelligence or notices, published and printed in small or inconspicuous type, as advertising, classed with similar notices of advertising, and for which compensation is intended to be charged.

"Class magazine" or "class newspaper." A printed paper or publication containing class, professional, trade, commercial, technical, scientific, educational, religious, financial, legal or other matter and intelligence, intended to be disseminated exclusively among subscribers or readers concerned or interested in the subject matters published.

"Column." A single unit or upright section, of the total height of the type printed page, as separated from the remainder of the page by a line, rule, or space, and not less than ten ems pica in width.

"Column rule." The printed line between, or which separates, the printed columns of any type page.

"Court." A court or tribunal of record, established for the public administration of justice under the provisions of the Constitution of Pennsylvania or any statute.

"Daily newspaper." A newspaper regularly published at least five days in the week, either including or excluding Sundays and legal holidays.

"Decree." A decision, judgment, order or sentence of any court.

"Display advertising." Intelligence made conspicuous, and designated by either reading matter, printed from various sizes, kinds and styles of types or illustrations, and printed or published for a compensation, demanded or intended to be received from those interested in, affected or served by, the subject matter published.

"Em." A square of a type, or a space equal to the square of the depth or height of a particular type, as measured by the number of points in height of the type.

"Journal." A newspaper, class newspaper, periodical, or magazine.

"Law." A statute, a home rule charter, or an enactment entitled an ordinance, resolution, rule or regulation of any government unit.

"Legal advertisement." A notice, advertisement, publication, statement, or abstract of a notice, advertisement, publication, or statement, required by resolution of a corporation, unincorporated association, or government unit, or ordinance of a political subdivision, or by law, or by rule, order, or decree of court, to be published, for a valuable consideration, in either a newspaper of general circulation, a legal newspaper or an official newspaper.

"Legal newspaper." A newspaper which is a "legal periodical," "official legal newspaper," or "official legal periodical," publishing legal intelligence, as designated by general rule or rule of court for

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the publication of legal advertisements and notices required by law, rule, order, or decree of court, to be published in a legal newspaper, legal periodical, official legal newspaper, or official legal periodical, so designated by general rule or rule of court.

"**Legal notice.**" When required to be printed or published, either a legal advertisement, a legal notice, an official advertisement, or an official legal notice.

"**Liners.**" Advertisements, published as reading notices, intelligence, or announcements for which compensation is intended to be charged to those interested in the publication thereof.

"**Long primer.**" A type 10 type points in depth or height.

"**Magazine.**" Partakes of the nature of a periodical.

"**Minion.**" A type 7 type points in depth or height.

"**News.**" Narrative, or recent intelligence, disseminating current information as to local, general, or world-wide happenings, concerning any person or persons, matters of private or public interest, or concerning any matters affecting the public welfare.

"**Newspaper.**"

(1) A printed paper or publication, bearing a title or name, and conveying reading or pictorial intelligence of passing events, local or general happenings, printing regularly or irregularly editorial comment, announcements, miscellaneous reading matter, commercial advertising, classified advertising, legal advertising, and other notices, and which has been issued in numbers of four or more pages at short intervals, either daily, twice or oftener each week, or weekly, continuously during a period of at least six months, or as the successor of such a printed paper or publication issued during an immediate prior period of at least six months, and which has been circulated and distributed from an established place of business to subscribers or readers without regard to number, for a definite price or consideration, either entered or entitled to be entered under the Postal Rules and Regulations as second class matter in the United States mails, and subscribed for by readers at a fixed price for each copy, or at a price fixed per annum. A newspaper may be either a daily newspaper, weekly newspaper, newspaper of general circulation, official newspaper, or a legal newspaper, as defined in this section. Continuous publication within the meaning of this section shall not be deemed interrupted by any involuntary suspension of publication resulting from loss, destruction, failure or unavailability of operating facilities, equipment or personnel from whatever cause, and any newspaper so affected shall not be disqualified to publish official and legal advertising in the event that publication is resumed within one week after it again becomes possible.

(2) A printed paper or publication, regardless of size, contents, or time of issue, or number of copies issued, distributed and circulated gratuitously, is not a newspaper.

(3) A printed paper or publication, not entitled to be entered, or which has been denied entry, as second class matter in the United States mails under the Postal Rules and Regulations of the United States is not a newspaper.

"**Newspaper of general circulation.**" A newspaper issued daily, or not less than once a week, intended for general distribution and circulation, and sold at fixed prices per copy per week, per month, or per annum, to subscribers and readers without regard to business, trade, profession or class.

"**Nonpareil.**" A type 6 type points in depth or height.

"**Notice.**" A formal printed announcement, transmitting intelligence, information, or warning, to a particular person, or generally to all persons who may read such notice.

"**Official advertisement.**" A notice, advertisement, publication, or statement, or an abstract of a notice, advertisement, publication, or statement, required to be made by law, rule, order, or decree of court, by any person, or in the conduct of the business of a private or public corporation, or on the order of any government unit, or in the performance of any official duty imposed by law, rule, order, or decree of court, resolution or ordinance.

"**Official advertising and legal advertising.**" Any advertisement, notice, statement, report, resolution, ordinance, or abstract of the same, required by law, rule, order or decree of court, by resolution of any board of directors, shareholders or officers of any corporation or unincorporated association, or any government unit to be printed and published for a valuable consideration in a newspaper.

"**Official newspaper.**" A newspaper designated by a government unit for the publication of notices and statements required by rule, order, resolution, or ordinance of such unit.

"**Ordinance.**" A municipal rule or regulation, adopted in the manner required by statute or home rule charter, by the lawfully constituted officers of any political subdivision or municipal or other local authority.

"**Periodical.**" A printed paper or publication, issued in pamphlet or book form, regardless of page size or number of pages, at stated or regular intervals of more than one day between each issue, containing either general, class, trade, technical, scientific, serial articles, or other reading matter, advertising, et cetera, and entitled to be entered as second class matter in the United States mails under the Postal Rules and Regulations of the United States.

"**Pica.**" A type 12 type points in depth or height.

"**Point.**" A unit of measurement for determining the height of a type, letter, figure, or other character, or the width of a rule, as heretofore generally known and fixed by general agreement of certain type founders and manufacturers, at 0.0138 inch in length.

"**Proof of publication.**" A printed or written statement, declaring the name of a newspaper of general circulation, a legal newspaper or an official newapaper, as defined in this section, its place of business, when the same was established, the date or dates, and issue or issues, in which a printed notice or publication appeared, and to which is securely attached, exactly as printed or published, a copy of the official advertisement, official notice, legal notice, or legal advertisement, verified with a statement of the owner, publisher, or the designated agent of the owner or publisher, of such publication in which the official or legal advertisement or notice was published, duly sworn to before a person authorized to administer oaths, and also declaring that the affiant is not interested in the subject matter of the notice or advertising, and that all of the allegations of the statement as to the time, place, and character of publication are true.

"**Publication.**"

(1) The act of printing a notice, advertisement, or proclamation, for the purpose of disseminating information to the people at large.

(2) A journal, magazine, newspaper, class newspaper or periodical.

"**Rate.**" The price or sum fixed for printing and publishing either official, legal, or commercial advertising, and may be either a price or sum fixed for a single reading line in a single column, or for a space of the depth of one inch in a single column, or it may mean the particular stated sums or prices fixed for printing and publishing official or legal advertising, where the style and form does not vary except for the names and addresses of the interested parties, such as notices of applications for charters of incorporation, shareholders' meetings, executors', administrators' or auditors' notices, register of wills' audit notices, obituary or death notices, et cetera.

"**Reading matter.**" News or other printed matter, intended to be read, as distinguished from intelligence notices, announcements, display advertising, or advertising published for a compensation.

"**Resolution.**" A formal agreement or consent to do or not to do a certain thing, which has been recorded upon the minutes or records of a government unit, or by either the shareholders, board of directors or other body of a corporation, or by the members, directors, managers, or trustees of an unincorporated association or society of individuals.

"**Rule.**" Any formal order or direction made by a tribunal or other government unit.

"**Sample copy.**" A copy of a publication distributed without charge or expense to prospective subscribers or advertisers, in numbers limited by the United States Postal Rules and Regulations governing second class mail matter.

"**Small pica.**" A type 11 type points in depth or height.

"**Space.**" The length and breadth of a printed type page, or any subdivision thereof, intended to be used for either news or advertising matter of any kind.

"Subscriber." A person who buys or orders verbally or by written subscription, or accepts upon delivery from the United States mails or a carrier, issues or copies of any publication.

"Type." A piece of metal or wood from which either a letter, figure, or other character is impressed with ink upon paper, or an image of such a character.

"Weekly newspaper." A newspaper issued at least once a week.

(b) Other definitions.—Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Commonwealth agency." The Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth government, but the term does not include any court or other officer or agency of the unified judicial system, or the General Assembly and its officers and agencies.

"Commonwealth government." The government of the Commonwealth, including the courts and other officers or agencies of the unified judicial system, the General Assembly and its officers and agencies, the Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth, but the term does not include any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision or local authority.

"General rule." A rule or order promulgated by or pursuant to the authority of the Supreme Court.

"Government unit." The Commonwealth government, and any political subdivision or municipal or other local authority, or any officer or agency of any such political subdivision or local authority.

"Rule of court." A rule promulgated by a court regulating the practice or procedure before the promulgating court.

CHAPTER 3

LEGAL ADVERTISING

Sec.
301. Short title of chapter.
302. Scope and interpretation of chapter.
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304. Establishment and change of advertising rates.
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306. Use of trade publications.
307. Effect of failure to advertise when required.
308. Additional publication in legal journals.
309. Inclusion of common geographical names.
310. No unauthorized advertisements to be published.

§ 301. Short title of chapter

This chapter shall be known and may be cited as the "Newspaper Advertising Act."

§ 302. Scope and interpretation of chapter

The provisions of this chapter are intended to be a comprehensive statute:

(1) Creating uniformity in the publication of legal notices, official advertisements, and advertisements, or abstracts of any notice, statement, or advertisement required by law, rule, order or decree of court to be published in a newspaper.

(2) Defining the publications in which official and legal advertising shall be published.

(3) Prescribing methods for computing the charges therefor.

(4) Providing that the expenses for publishing legal advertising or notices shall be taxable and collectible as costs in all matters except as otherwise provided by general rules.

(5) Establishing a uniform method for determining the cost of legal advertising and legal notices, where rates, circulation of the particular publication, size of columns or pages, and kind or size of type used vary, in newspapers of different localities in this Commonwealth.

§ 303. Level of advertising rates

(a) General rule.—All official and legal advertising shall be charged for at an established or declared rate or price per single column, line of reading matter measured in depth by the point system, or at a rate or price per inch single column. When such official and legal advertising is not classified and is not published according to prescribed or recognized forms, and no rate has been established or declared, such rate for official and legal advertising shall not be in excess of the rates usually charged or received by the publication publishing such official and legal advertising for commercial, general, or other advertising.

(b) Exception.—Where official and legal advertising is usually and ordinarily published according to recognized or prescribed forms, or particular matters are itemized and classified under general headings, subsection (a) shall not prohibit the fixing of definite prices or sums for publishing official and legal advertising, regardless of the number of single column lines or space required for each item, notice, or advertisement published in any separate matter or proceeding, and regardless of rates established, fixed, charged or received for commercial, general or other advertising. The purpose of this subsection is to enable newspapers to take into consideration, as elements, when fixing advertising rates or charges, location of the advertisement in the newspaper, the purpose to be served, the character of the advertising, and that a newspaper is entitled to compensation for its readiness at all times to render an advertising service.

§ 304. Establishment and change of advertising rates

All newspapers of general circulation, official newspapers and legal newspapers accepting and publishing official and legal advertising, are hereby required to fix and establish rates and charges for official, legal and all other kinds of advertising, offered or accepted for publication, and such publications shall furnish, on demand, to any person having use for the same, detailed schedules, stating the rates and charges which shall be deemed to be in force and effect until changed or altered, and, when changed or altered, such publication shall give the person authorized or required to publish advertising, before demanding or receiving compensation at any increased rate, notice that the rates and charges of such publication for advertising have been changed or abrogated, and that increased advertising rates and charges have been established or fixed.

§ 305. Charges taxable as costs and administration expenses

Except as otherwise provided by general rule, all charges, costs, and expenses incurred, including the fees for affidavits to proofs of publication, for official and legal advertising in any matter by any person shall be taxable, collectible and payable as other court costs and expenses of administration are required by law to be taxed, collected, and paid, upon all decrees of court.

§ 306. Use of trade publications

(a) General rule.—Any government unit which is required by law to advertise for bids for public works, contracts, supplies or equipment, may, in its discretion, authorize the publication of such advertising, in addition to the newspapers authorized by the other provisions of this chapter, also in any publication or journal devoted to the dissemination of information about construction work published in this Commonwealth at least once a week and circulating among contractors, manufacturers and dealers doing business in the community in which such public works are to be constructed or supplies or equipment purchased.

(b) Exception.—Except with respect to publication by any city of third class or borough, no advertisement for bids for public works, contracts, supplies or equipment shall be inserted in any publication

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or journal devoted to the dissemination of information about construction work, unless such publication meets the following requirements:

(1) It has been established and regularly issued from a printing office and publication house in this Commonwealth for a period of at least 18 months.

(2) It has been entered, or entitled to be entered, for admission to the United States mails as second class matter.

(3) It has had a bona fide income from subscribers within this Commonwealth of not less than $15,000 per annum, duly certified by a public accountant.

(4) The rates and charges for such advertising shall not be in excess of those of newspapers of general circulation of a like circulation published in the community in which the public works are to be constructed or the supplies or equipment purchased.

§ 307. Effect of failure to advertise when required

No legal proceeding, matter, or case in which notice is required to be given by official or legal advertising, shall be binding and effective upon any interested person unless such official and legal advertising is printed and published in the newspapers of general circulation, official newspapers, and legal newspapers defined by this title, in the manner and as required by statute, and by any rule, order, or decree of court, resolution of a corporation, or unincorporated association, or ordinance, rule, or regulation of any government unit, in the proper newspapers of general circulation, official newspapers, and legal newspapers, defined by this title, and a proof of publication is filed of record in such matter or proceeding.

§ 308. Additional publication in legal journals

(a) General rule.—Except as otherwise provided by statute, every notice or advertisement required by law or rule of court to be published in one or more newspapers of general circulation, unless dispensed with by special order of court, shall also be published in the legal newspaper, issued at least weekly, in the county, designated by rules of court for the publication of court or other legal notices, if such newspaper exists. Publication in such legal newspaper shall be made as often as required to be made in such newspapers in general circulation, and shall be subject to the same stipulations and regulations as those imposed for the like services upon all newspapers.

(b) Exceptions.—

(1) Subsection (a) shall not require the publication in such legal newspapers of municipal ordinances, municipal or county auditors' or controllers' reports, school district auditors' or controllers' reports, or summaries or statements thereof, mercantile appraisers' notice, advertising for bids for contracts for public work, materials or supplies, or lists of delinquent taxpayers.

(2) Publication of election notices in legal newspapers shall be governed by the provisions of the act of June 3, 1937 (P.L. 1333, No. 320), known as the "Pennsylvania Election Code."

§ 309. Inclusion of common geographical names

(a) General rule.—Whenever official advertising or legal advertising involves a road, street, highway, bridge, municipality, village or boundary, the advertisement shall, in order that it may readily be understood by inhabitants of the area involved, include the common, local or general usage designation of every such road, street, highway, bridge, municipality, village or boundary.

(b) Mistake.—The inclusion of a common local or general language designation for the purpose of complying with subsection (a), if mistaken or erroneous, shall not invalidate any matter or proceeding which in all other respects is properly and lawfully executed.

§ 310. No unauthorized advertisements to be published

No advertisement shall be published by any court or other government unit, which is not duly authorized by law, nor in more papers than so authorized.

APPENDIX E

Guidelines Developed to Aid News Media-Government Relations

In 1981, PSBA joined with the Pennsylvania Newspaper Publishers' Association, the Pennsylvania Association of Broadcasters and the Pennsylvania State Association of Township Supervisors in preparing the following guidelines to improve relationships in the coverage of public affairs.

Preface: Pennsylvania's "Sunshine Law" (Act 175 of 1974) defines the types of meetings, conducted by elected and appointed public officials, that are to be open to the public. The agreed purpose of the following guidelines is to acquaint both officials and news media representatives with what will be expected of all parties. News media representatives include newspaper reporters and photographers, radio and television news personnel, and supporting technical personnel. The goal of these guidelines is to alleviate as much as possible, in advance, any anxiety or uncertainty which might otherwise exist as to respective responsibilities during the conduct or coverage of a public meeting.

• **Ensured Access** — Any governmental agency, obliged by law or otherwise to conduct a meeting to which the public is to have access, shall ensure that the meeting is open to news coverage by the news media representatives identified above.

• **Standards for Coverage** — It is recognized that news judgment will necessitate the type and extent of news coverage of a public meeting, as well as subsequent reporting and editing decisions. It is assumed that news coverage will be factual and unbiased, and predicated on newsworthiness exclusively.

• **Operational Requirements** — All governmental agencies, insofar as physically possible, should recognize and utilize all means at their disposal to attempt to accommodate reasonably the operational needs of the news media.

Meeting Site — If it can be anticipated that a meeting will attract an unusually large attendance from the public, coupled with active public participation in matters on the meeting agenda, officials should arrange for a meeting site which will not cause undue inconvenience or denial of access to the proceedings.

Decorum — News media representatives will at all times be aware of the need to maintain proper decorum. They should take all reasonable steps to restrict their activities so that movement about the meeting site will be minimal, and noise levels nondisruptive. News media representatives will not act to encourage those who would seek to disrupt intentionally a duly convened meeting.

Space Requirements — When possible, an agency is encouraged to reserve suitable space for news media personnel to enable such personnel to adequately cover the meeting. In setting such space aside, consideration should be given to the lighting and power needs media representatives will need to function efficiently and responsibly on behalf of their respective news organizations. Placement of microphones and cameras should be accomplished so as to permit full coverage of all meeting activities. It is in the best interests of all concerned if print and electronic journalists are able to use all of the modern tools of their respective professions.

Full Coverage — Full media coverage shall at all times be allowed from gavel to gavel, since the news media may cover all aspects of a public meeting. While some public officials or potential speakers might be hesitant to subject themselves to media coverage — for fear of exposure, embarrassment or invasion of privacy — such concerns are not recognized by law. Therefore, media coverage will not be curtailed at the request of any official, meeting participant, or member of the public.

Complaints — Any complaints by an agency regarding unprofessional performance or disruptive behavior by a journalist should be reported to the offending person's employer. Such employers are urged to make a diligent effort to provide a satisfactory acknowledgment and response to the complaining agency.

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